

C-08-2343-CW

EXHIBIT "A"

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

**INMATE
COPY**

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

FRANCISCO CASTILLO)
_____)

CDC Number C-85768

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

JUNE 27, 2007

1:10 P.M.

PANEL PRESENT:

STAN KUBOCHI, Presiding Commissioner
NOREEN BLONIEN, Deputy Commissioner

OTHERS PRESENT:

FRANCISCO CASTILLO, Inmate
MIKE GUNNING, Attorney for Inmate
SCOTT CARBAUGH, Deputy District Attorney
Correctional Officer(s) Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

SHELLEY KELBER
NORTHERN CALIFORNIA COURT REPORTERS

INDEX

	<u>Page</u>
Proceedings	1
Case Factors	8
Pre-Commitment Factors	11
Parole Plans	15
Post-Commitment Factors	21
Closing Statements	40
Recess	48
Decision	49
Adjournment	58
Transcriber Certification	59

--oOo--

P R O C E E D I N G S

DEPUTY COMMISSIONER BLONIEN: We're on record.

PRESIDING COMMISSIONER KUBOCHI: We're on record

for the subsequent parole consideration hearing of
Francisco Castillo, C-A-S-T-I-L-L-O, CDC number C-85768.
Today's date is June 27th, we're located at the
Correctional Training Facility, Soledad, California, and
it is about 1:10 p.m. Mr. Castillo, these proceedings
are recorded, from the record of this case a transcript
would be made and delivered to you at this institution at
a later time. For purposes of assisting the transcriber,
we're going to go around the room, state our names, spell
our last name, in addition to your last name's spelling,
please provide us with your CDC number. My name is Stan
Kubochi, K-U-B-O-C-H-I, Commissioner.

DEPUTY COMMISSIONER BLONIEN: I'm Noreen Blonien,
B-L-O-N-I-E-N, I'm a deputy commissioner.

ATTORNEY GUNNING: Mike Gunning, G-U-N-N-I-N-G,
I'm the attorney for Mr. Castillo.

INMATE CASTILLO: My name is Francisco Castillo,
C-A-S-T-I-L-L-O, CDC number Charlie 85768.

DEPUTY DISTRICT ATTORNEY CARBAUGH:
Scott Carbaugh, C-A-R-B-A-U-G-H, Deputy District
Attorney, Los Angeles County.

PRESIDING COMMISSIONER KUBOCHI: In addition

1 there are two officers here for security who are
2 nonparticipants. Mr. Castillo, please look at that BPT
3 1073 form, it's not necessary for you to read the entire
4 document. I will explain verbally what the document is,
5 and what its function is for, and that is to assure you
6 that any disabilities will be accommodated to allow you
7 to effectively communicate with this panel. Back in
8 March of 2007 Correctional Counselor Verdesoto,
9 V-E-R-D-E-S-O-T-O, reviewed your Central File and
10 Correctional Counselor Verdesoto was looking to see if
11 there was any prior documentation of any physical
12 disabilities that required assistance for this hearing
13 and checked the box indicating that upon review of your
14 Central File it did not appear to Correctional Counselor
15 Verdesoto that you needed any accommodations for your
16 hearing. In addition I note your signature with a date
17 of 3/1 of '07, with a check box, I do not need any
18 assistance for my hearing. Did all of that happen?

19 **INMATE CASTILLO:** Yes, sir.

20 **PRESIDING COMMISSIONER KUBOCHI:** And as I speak
21 to you now, do you have any hearing problems?

22 **INMATE CASTILLO:** No, I don't, sir.

23 **PRESIDING COMMISSIONER KUBOCHI:** Have any vision
24 problems?

25 **INMATE CASTILLO:** No, sir.

1 **PRESIDING COMMISSIONER KUBOCHI:** You have a GED
2 and you also have been tested at greater than tenth grade
3 reading level, and I will assume by your accomplishments
4 in the academics that you can read and write English.

5 **INMATE CASTILLO:** Yes, sir.

6 **PRESIDING COMMISSIONER KUBOCHI:** And that you're
7 not going to have any problem reading any documents if
8 required to do so during this hearing, is that correct?

9 **INMATE CASTILLO:** That's correct, sir.

10 **PRESIDING COMMISSIONER KUBOCHI:** And I am going
11 to ask you whether or not, from a physical standpoint,
12 you have any pain or discomfort?

13 **INMATE CASTILLO:** No, sir.

14 **PRESIDING COMMISSIONER KUBOCHI:** How about any
15 disabilities physically?

16 **INMATE CASTILLO:** No, sir.

17 **PRESIDING COMMISSIONER KUBOCHI:** And have you
18 consumed anything in the last 48 hours that could
19 interfere with your ability to think clearly/

20 **INMATE CASTILLO:** No, sir.

21 **PRESIDING COMMISSIONER KUBOCHI:** Today's hearing
22 is being conducted pursuant to the Penal Code and the
23 Rules and Regulations of the Board of Parole Hearings
24 that apply to suitability hearings of life inmates. The
25 purpose of today's hearing is to once again consider your

1 suitability for parole. In doing so we will look at the
2 number and the nature of crimes for which you were
3 committed, your prior criminal history; I will be
4 reviewing with you your personal and social history
5 before your incarceration and your parole plans. In
6 regard to your parole plans, please let us know what
7 those plans are as of today, regardless of any
8 information that's been documented in the past. In
9 addition, at any time throughout this hearing, if you
10 think of documents that you believe would support a
11 finding of suitability, provide them to Mr. Gunning for
12 presentation on your behalf. Commissioner Blonien will
13 be discussing with you your behavior and programming
14 since your commitment, and that includes participation in
15 academic, vocation, work assignments, and group therapy
16 and the evaluations of mental health experts. We will
17 reach a decision today and inform you whether or not we
18 find you suitable for parole and the reasons for our
19 decision. If you are found suitable for parole the
20 length of your confinement will be explained to you.
21 Before we recess for deliberations, questions may be
22 asked of you on the factors that I've just described.
23 Questions may come from the panel; the district attorney
24 may ask the panel questions and your answers, if any, to
25 the questions, will be directed to the panel. This is

1 not adversarial. It is not a case where you are against
2 the board or you're against the DA in a finding of
3 suitability. We're just trying to gather facts here.
4 Before closing, your attorney, Mr. Gunning, may ask you
5 questions and before recessing the district attorney's
6 representative makes a final statement. Mr. Gunning will
7 tell us why you are suitable for release; and you will be
8 given an opportunity to tell us why you feel you're
9 suitable for parole. We're going to then recess, clear
10 the room, deliberate; once we reach a decision we're
11 going to bring everybody back in, we're going to announce
12 the decision. You'll be given a written copy of the
13 decision that becomes final in 120 days. And as to any
14 appeal rights, please bring those to the attention of
15 your attorney, Mr. Gunning, he's an excellent attorney
16 and he's very knowledgeable about your rights in regard
17 to parole suitability hearings. The California Code of
18 Regulations states that regardless of time served, a life
19 inmate shall be found unsuitable for, and denied, parole,
20 if in the judgment of the panel the inmate would pose an
21 unreasonable risk of danger to society if released from
22 prison. You have certain rights, Mr. Castillo; those
23 rights include the right of notice to this hearing. Were
24 you given notice by Correctional Counselor Verdesoto of
25 your parole suitability hearing?

1 **INMATE CASTILLO:** Yes, sir.

2 **PRESIDING COMMISSIONER KUBOCHI:** And you also
3 have the right to review your Central File, were you
4 given an opportunity to do so?

5 **INMATE CASTILLO:** Yes, I was, sir.

6 **PRESIDING COMMISSIONER KUBOCHI:** And you also
7 have an additional right to have your case heard by an
8 impartial panel, are you prepared to proceed this
9 afternoon with this panel?

10 **INMATE CASTILLO:** Yes, sir.

11 **PRESIDING COMMISSIONER KUBOCHI:** Mr. Castillo,
12 this is a subsequent parole consideration hearing, and
13 you are not required to admit or discuss you offense.
14 That is, you don't have to talk about the facts of the
15 life crime. I want you to understand that this panel
16 does accept as true the findings of the Los Angeles
17 County Superior Court, do you understand that?

18 **INMATE CASTILLO:** I understand, sir.

19 **PRESIDING COMMISSIONER KUBOCHI:** Our board report
20 indicates that you were received into the Department of
21 Corrections from Los Angeles County Superior Court for a
22 conviction in docket number A965649, and that the offense
23 in the information that resulted in your life sentence
24 was for a conviction of Penal Code Section 187, murder in
25 the second degree. Also an enhancement, use of a knife,

1 pursuant to Penal Code Section 12022(b). Your life term
2 began on November 2nd, 1988; your minimum eligible parole
3 date is November 2nd, 1998. Commissioner Blonien, is
4 there any confidential material that will be relied upon
5 by this panel in reaching a decision?

6 **DEPUTY COMMISSIONER BLONIEN:** No, there's not.

7 **PRESIDING COMMISSIONER KUBOCHI:** Mr. Castillo,
8 I've passed along a hearing checklist to your attorney,
9 Mr. Gunning, as well as the district attorney.

10 **PRESIDING COMMISSIONER KUBOCHI:** Thank you. You
11 delivered papers at some point in time in your prior
12 existence, either now or in a previous life,
13 Mr. Carbaugh. The purpose of this hearing checklist is
14 to assure you that the information in my board packet
15 about you, the crime and your behavior since prison, has
16 been shared with your attorney, Mr. Gunning. I don't
17 know anything about you that hasn't been shared with
18 Mr. Gunning, do you understand that?

19 **INMATE CASTILLO:** Yes, sir.

20 **PRESIDING COMMISSIONER KUBOCHI:** Mr. Gunning,
21 will Mr. Castillo be discussing the facts of the murder
22 case with this panel?

23 **ATTORNEY GUNNING:** He will not.

24 **PRESIDING COMMISSIONER KUBOCHI:** Mr. Castillo,
25 you have a statutory right to not talk about the murder,

1 and by my review of the file, it occurred on or about
2 February 24th, 1988. Further, that your birth date
3 appears to be about February 20th, 1965, you were about 23
4 years old at the time of the crime, is that correct?

5 **INMATE CASTILLO:** Yes, sir.

6 **PRESIDING COMMISSIONER KUBOCHI:** In regard to the
7 events on February 24th, 1988, resulting in the murder of
8 the victim in this case, we will honor your right not to
9 talk about that murder. However, I do want an
10 understanding that this panel, in discussing your
11 personal life, your personal history, before and after
12 the murder, that, in discussing those facts before and
13 after, those questions don't violate your right not to
14 talk about the murder, you understand that?

15 **INMATE CASTILLO:** I understand, sir.

16 **PRESIDING COMMISSIONER KUBOCHI:** In other words,
17 we can ask you in January 1988, looking back on that time
18 period at the present, do you believe that you had an
19 alcohol problem? That's a month before the crime, but
20 that question doesn't violate your right not to talk
21 about the crime, do you understand that?

22 **INMATE CASTILLO:** I understand, sir.

23 **PRESIDING COMMISSIONER KUBOCHI:** The purpose of
24 that question would be to obtain facts about your
25 personal life that could impact the finding of

1 suitability. In regard to the facts of the case, I'm
2 looking at the board report of June 2004, for a summary
3 of the crime. That states:

4 "On February 24th, 1988, at approximately
5 7:45 p.m. the victim's wife, Linda
6 McCardy, last name is M-C, capital
7 C-A-R-D-Y, returned to her home at 375
8 North Ridgewood Place, in Hollywood.
9 When she entered the den of the house she
10 discovered the body of her deceased
11 husband, victim John McCardy, who was
12 seated in a chair in the living room."

13 One moment, there's a -- what I'm going to do is,
14 we're not going to take a recess, the, the door and the
15 doorframe do not fit closely and any breeze in the room
16 here makes the door rattle. To reiterate:

17 "Upon returning to her home Linda McCardy
18 entered the den of the house and observed
19 her husband, John, seated in a chair in
20 the living room. As she checked the
21 victim's pulse she saw a male seated on
22 the couch in the living room near the
23 victim. Thinking that this person was
24 also deceased she went to the den, where
25 she picked up the phone and called 911.

1 While on the phone she heard footsteps in
2 the living room and then observed the
3 male who had been seated on the couch
4 walking out the front door of the
5 residence. The suspect fled on foot,
6 there was extensive ransacking to the
7 upstairs and downstairs area of the
8 house. Noted missing in the days
9 following the murder was \$100 in currency
10 taken from the victim and one wristwatch
11 valued at \$75. After investigation, the
12 detective utilized the department's
13 computer system to identify a friend of
14 the victim, based on a possible name,
15 physical description, tattoo and possible
16 birth date of 2/20/65. Detectives
17 located the CI&I arrest record for
18 Francisco Parnala Castillo, Jr. Parnala
19 is spelled P-A-R-N-A-L-A, who has a birth
20 date of 2/20 of '65. Fingerprints taken
21 from the subject tentatively matched the
22 prints lifted from a cigarette case that
23 was in the victim's residence. The tread
24 pattern on the subject's tennis shoes
25 matched the pattern of a bloody shoeprint

1 on the victim's floor. There was a --
2 I'm paraphrasing -- there was a photo
3 identification process shown to the
4 victim's wife, who identified
5 Mr. Castillo's photo as being the same
6 person she had seen at the door on
7 February 24th, 1988."

8 I'm doing that only because I don't know, maybe
9 it was February 2nd, 1988, I have noted typographical
10 errors in some board packages. Whether that date is 2/2
11 of '88 or 2/24 of '88 is irrelevant because we're not
12 here to retry Mr. Castillo's guilt or innocence.

13 "A family housekeeper also positively
14 identified the photo of Mr. Castillo as
15 the person who had visited the victim on
16 2/19 of '88. Detectives searched the
17 area outside the subject's father's
18 apartment and recovered a blue and black
19 long sleeved shirt from beneath the
20 stairwell. The subject's father said
21 that the subject had slept in that area
22 on the eve of the murder. Both the
23 tennis shoes and the shirt tested
24 positive for the presence of blood.
25 Prior to being interviewed by detectives

1 on 3/3 of '88, Mr. Castillo was advised
2 of his rights and he waived them. The
3 interview was tape-recorded and after
4 being confronted with some contradictory
5 statements, Mr. Castillo admitted to
6 stabbing the victim. Mr. Castillo told
7 the police that he and the victim had
8 been drinking vodka on the day of the
9 homicide for quite a while and that he
10 and the victim were intoxicated."

11 The probation report filed with Los Angeles
12 County indicates, sir, that on September 1st, 1982, Los
13 Angeles City Police arrested you for auto theft in
14 violation of Penal Code Section 487.3 of the Penal Code
15 and also 10851 of the Vehicle Code, unlawfully driving a
16 motor vehicle. A juvenile petition was filed in
17 September of 1982, you advised probation that as to this
18 case the matter was certified to for prosecution in adult
19 court and that you were given 90 days in the county jail.
20 As an adult, on October 21st, 1983, an arrest for 11550 of
21 the Health and Safety Code, by the Los Angeles Police
22 Department, being under the influence of a controlled
23 substance, and that you advised probation that this
24 offense involved your use of PCP. On January 9th, 1984,
25 arrest by Los Angeles Police Department, violation was

1 459 of the Penal Code, burglary. Then on April 5th, 1984,
2 you were convicted of burglary and the degree of burglary
3 was first degree and the caption of the probation
4 department says that you entered a residence, stole some
5 change, a camera and a radio. You were observed walking
6 down the street carrying a radio and was taken into
7 custody by the victim and a witness. That you were
8 returned to prison three times for parole violations
9 based upon this conviction. The first two times were for
10 using controlled substances and the last time was a
11 result of the homicide. The information in regard to
12 that burglary conviction, besides the three violations of
13 parole, indicate that you were on parole on the date of
14 the homicide. In regard to your personal history I'm
15 looking all the way back to a board report of 2000 for a
16 detailed -- oh, excuse me, I'm actually looking at the
17 psychological evaluation of 2002, 2000 -- and that
18 psychological evaluation was done by doctor C-O-A-T-E. I
19 was looking for more details in regard to your personal
20 history. That you told Dr. Coate that you were raised by
21 your mother and father in Michigan until the age of 13,
22 when your mother died of cancer and the father, and the
23 family moved to California to be close to your father's
24 parents. That would have been your father's,
25 grandparents to you. You reported an extremely close

1 relationship with your mother and that after her death
2 your life drastically changed. Your father retired from
3 the Coast Guard and he was rarely at home. After the
4 death of you mother, your father had difficulty handling
5 the loss, as well as taking care of six children. You
6 were the second oldest of six children and that you had
7 been in and out of law enforcement, probation, facilities
8 since your teenage years. You have described your home
9 life as very, as having conflict, and was full of stress,
10 as your father drank heavily and abused both your mother
11 and the children. You described your teenage years as
12 living in fear and not having anyone to confide in.
13 After the death of your mother the physical abuse by your
14 father escalated to the point that the children were
15 taken out of the home by social services, or juvenile
16 authorities and placed in the care of your mother's
17 grandmother. The grandmother could not handle the
18 responsibility of raising six children and ultimately the
19 children in the family were separated and placed in
20 different foster care homes. You ran away from foster
21 care and stayed with friends and you, to use the phrasing
22 of the psychologist, were on the street. You do not make
23 contact with your brothers and sisters, although you do
24 exchange holiday cards, but you don't receive much
25 correspondence from any of them. Who visits you here,

1 sir?

2 **INMATE CASTILLO:** I haven't had a visit since
3 I've been incarcerated, sir.

4 **PRESIDING COMMISSIONER KUBOCHI:** Okay. Do you
5 maintain any contact with anybody on the outside?

6 **INMATE CASTILLO:** Occasionally I write my
7 youngest sister and my nieces, daughters of my sister.

8 **PRESIDING COMMISSIONER KUBOCHI:** Okay, and why do
9 you not have more contact with anybody? That's not being
10 held against you, I'm just asking.

11 **INMATE CASTILLO:** I understand that. I have no
12 address or any sense of where they're at. I do have a
13 brother that's incarcerated in another prison and he
14 writes me. We have correspondence approval through the
15 mail system.

16 **PRESIDING COMMISSIONER KUBOCHI:** How would you
17 describe your personality?

18 **INMATE CASTILLO:** My personality?

19 **PRESIDING COMMISSIONER KUBOCHI:** Yeah, outgoing,
20 loner?

21 **INMATE CASTILLO:** Well, it's changed throughout
22 the years since I've been incarcerated and if you go back
23 before the committed offense, I could say that I was
24 lost, I didn't have no sense of direction. But, given
25 the time since I've been incarcerated I've actually taken

1 the time to actually reflect on why I'm here and to
2 understand that and I could say, I would say that I'm
3 actually outgoing, but also -- what's another way of
4 saying that -- caring? For the things I do, and the
5 things -- and knowing it's important to make up for my
6 mistakes.

7 **PRESIDING COMMISSIONER KUBOCHI:** How would you
8 characterize your ability to get along with people in a
9 group setting?

10 **INMATE CASTILLO:** In a group setting? Although
11 that we have differences there's people in a group
12 setting that I have differences, and, I have no problems
13 getting along with people.

14 **PRESIDING COMMISSIONER KUBOCHI:** I'll just go
15 into parole plans now, sometimes we wait to see what your
16 marketable skills were in prison, but you're very able to
17 articulate and make, make any adjustments in that regard.
18 I'm sure that we're not going to duplicate the areas that
19 we cover. Tell me about your parole plans, and where do
20 you see yourself upon release? Three years from that?
21 And five years away from now, if released?

22 **INMATE CASTILLO:** If I were to be released, I
23 understand it's important to have a residence to parole
24 to. I understand through the assistance of my, my parole
25 agent, that, that I can receive assistance through

1 welfare.

2 PRESIDING COMMISSIONER KUBOCHI: Mm-hmm.

3 INMATE CASTILLO: And also other employment
4 agencies for job opportunities. I plan to find a place
5 by a halfway house that has, that could also provide me
6 with group therapy, to continue with my group therapy.
7 And also, maybe also further my vocational marketable
8 skills, and --

9 PRESIDING COMMISSIONER KUBOCHI: What, what
10 marketable skills do you believe you have to offer?

11 INMATE CASTILLO: Well, actually, I've actually
12 participated in taking a vocational trade here in this
13 prison and I understand that's a marketable skill and I
14 also took the time to achieve my GED since being
15 incarcerated, this past few years, because understanding
16 that not having an education it would be difficult when I
17 get, am, released, or, if I am released, to get a job.
18 Or even, to, even a place of residence.

19 PRESIDING COMMISSIONER KUBOCHI: Now tell me
20 about this, in view of that burglary conviction, that
21 residence burglary conviction, you had three violations
22 of parole. Didn't it start sinking in on you that, that,
23 unless you straightened up back then that, that they were
24 just going to yank you back into custody.

25 INMATE CASTILLO: Yes, sir. During the time of

1 the burglary, not remembering the date, but because I was
2 young, I was immature, I was uneducated. I had no sense
3 of what I was doing all the time and, and pretty much
4 didn't really care, it seemed like, about what I was
5 doing.

6 **PRESIDING COMMISSIONER KUBOCHI:** Now, the
7 practice is that you would be returned to the county of
8 commitment, in this case it was LA. Have you put much
9 thought as to where, what county you think you could
10 thrive in? Have you put any thought, like I says, I want
11 you to tell me where you see yourself upon release, three
12 years from that date, and five years from that date.

13 **INMATE CASTILLO:** I would like to be closer to
14 wherever I have any relatives and Los Angeles is probably
15 the place where I would seek residence and continue to
16 achieve those things that I need to, to do, to live a
17 life that is true and right and, but, understanding, that
18 you know, you know, it's difficult to go into a place and
19 not knowing how it's changed in the past years.

20 **PRESIDING COMMISSIONER KUBOCHI:** It's changed a
21 lot.

22 **INMATE CASTILLO:** Yes, it has. And knowing that,
23 you know, even technology has changed. Even people,
24 people in the surroundings of where I was brought up,
25 that's no longer there, pretty much.

1 **PRESIDING COMMISSIONER KUBOCHI:** That might be a
2 positive, though, in some regards.

4 PRESIDING COMMISSIONER KUBOCHI: We're going to
5 take a time out, your attorney has a coughing spell --

7 DEPUTY COMMISSIONER BLONIEN: Okay, we're back on
8 record.

14 **INMATE CASTILLO:** To even see that far is, it's
15 actually difficult, but, three years before that, three
16 years from that and five years after that? I see myself
17 living a responsible life, a productive life.

20 **INMATE CASTILLO:** Well, actually, I, you know, I
21 know there's work available for it, in every area and, I
22 don't have, what is it called, anything that I'm seeking
23 as a career. But, knowing that there are jobs available,
24 just working, I would like one day to become a heavy
25 equipment operator.

1 **PRESIDING COMMISSIONER KUBOCHI:** That's a good
2 choice.

3 **INMATE CASTILLO:** Or even, I've actually, maybe
4 even owning my own home. I know it's difficult to even
5 see that from where I stand or where I'm sitting, but
6 knowing that it's going to take a lot of hard work,
7 patience, and doing what's right. And, basically, that's
8 pretty much it, to be able to support, not just myself,
9 maybe help out my family.

10 **PRESIDING COMMISSIONER KUBOCHI:** Now, the one
11 thing before we move on to other aspects of this hearing
12 is that, in looking at some of your parole plans -- first
13 of all, I want you to realize that nobody picks their
14 family and so that it's not held against you that you
15 don't have a lot of letters here from your family, don't
16 even worry about that. What I do want you to think
17 about, from my own experience, is that you should start
18 contacting the county, and start getting the assistance
19 of your correctional counselor, because there's many
20 nonprofit organizations in the county that get money from
21 people like the welfare department, I think in LA it's
22 the Department of Social Services -- they get grants to
23 conduct training. Truck driving, I don't know about
24 heavy equipment, and they have other types of training
25 programs at low cost or aimed at low income people, and

1 you might want to start exploring that right away.
2 Because you might find one that has heavy equipment
3 training at little or no cost, and you should start
4 looking at this while you're on the inside.

5 **INMATE CASTILLO:** I understand, sir.

6 **PRESIDING COMMISSIONER KUBOCHI:** Because I saw
7 just the post, the postage thing on the envelope, is
8 you're going to rely a lot on government agencies, and
9 the Department of Parole to get you that assistance to
10 get headed in those areas, but you might want to start
11 getting those started now.

12 **INMATE CASTILLO:** I understand, sir. I presented
13 this letter that I received by the Department of
14 Corrections, Rehabilitations, Parole Division because,
15 because I was searching for what are my options.

16 **PRESIDING COMMISSIONER KUBOCHI:** Right.

17 **INMATE CASTILLO:** And I do understand that the
18 county does provide these type of programs and even
19 grants that will assist me and I do have, I do have
20 addresses, a listing of addresses and places that I can
21 contact at this time.

22 **PRESIDING COMMISSIONER KUBOCHI:** Well, you're
23 going to have to start contacting them and then have a
24 list of their responses. Even if nothing's available
25 now, or even if they say they can't say anything until

1 you walk through their door.

2 **INMATE CASTILLO:** I understand, sir.

3 **PRESIDING COMMISSIONER KUBOCHI:** One final thing
4 in that area is that I think it's advisable for you to
5 look into residence, transitional housing. Just as you
6 pointed out, they have trained people who are counselors,
7 there's going to be people, professionals there who you
8 could talk to, with the frustrations of starting out all
9 on your own, which you are going to do. And you're going
10 to find the transition's going to be a lot easier.
11 Sometimes it's easier than trying to find a relative to
12 stay with.

13 **INMATE CASTILLO:** I understand, sir.

14 **PRESIDING COMMISSIONER KUBOCHI:** Because a
15 relative's got their own problems, you know, their own
16 family, their own economic needs. But you're going to
17 have to start looking for where those are now; what type
18 of living circumstances, what type of, what type of staff
19 do they have and what the cost is, and how long you could
20 stay there. An example is, is that there could be a
21 recognized alcohol substance abuse residence program that
22 accepts people transitioning from prison, they might have
23 a cost of 2500, but they waive it in certain
24 circumstances and you might qualify for that. You have
25 to start finding out now.

1 **INMATE CASTILLO:** I understand, sir, thank you.

2 **PRESIDING COMMISSIONER KUBOCHI:** With that, we're
3 going to go to Commissioner, to review your behavior
4 since your incarceration.

5 **DEPUTY COMMISSIONER BLONIEN:** Mr. Castillo, this
6 is your second subsequent hearing, and, as I was going
7 through your file, I went through your counselor's report
8 and the board packet. I went through your C-File, read
9 all of your psych reports that were in here and I was
10 wondering what happened. Your last appearance before the
11 board was actually June 7th, of 2001, and on 3/21/04 you
12 came and asked for a new psych and one was done on
13 8/25/04, but you didn't come to the board until 3/28/06
14 and you asked for a new psych. And then on 1/31/07 you
15 came to the board and it was postponed because you didn't
16 have a new psych, what happened?

17 **INMATE CASTILLO:** I'm only going by the
18 assistance of my attorney during that time. I discussed
19 with him why, you know, the postponement, but they, they
20 pointed out that it's necessary to have an updated psych.
21 So I, back in, I think it was 2004 --

22 **DEPUTY COMMISSIONER BLONIEN:** Mm-hmm.

23 **INMATE CASTILLO:** -- I was supposed to appear
24 before the board and they said because it was dated the
25 year of 2000 --

1 DEPUTY COMMISSIONER BLONIEN: Mm-hmm.

2 INMATE CASTILLO: -- that they need to update it.

3 In 2005, actually in 2004, I did have one updated.

4 DEPUTY COMMISSIONER BLONIEN: Right.

5 INMATE CASTILLO: By Dr. Gleason -- and when I

6 was --

7 DEPUTY COMMISSIONER BLONIEN: August of '04.

8 INMATE CASTILLO: So, in 2005, when 2005 came,
9 they said it was a year and a half old, that it's too
10 old. What I mean by they is the attorney that I had at
11 that time that was representing me, advised me that I
12 should postpone and then he also mentioned that if I
13 happened to go into the board and, because you don't have
14 a new psych report, that they will request a new psych
15 report. So when I went in 2006, I was, I was told that
16 they still don't have a new psych report on me. And,
17 finally I guess I was appointed a psychologist from
18 Sacramento through the Board of Prison Terms, and I think
19 it was conducted by Dr. Starrett.

20 DEPUTY COMMISSIONER BLONIEN: Correct.

21 INMATE CASTILLO: And, and this is where I'm at
22 right now.

23 DEPUTY COMMISSIONER BLONIEN: I got it. I was
24 looking for something bad. I was looking for some reason
25 why you didn't want to come to the board and trying to

1 figure out how this happened. So, now that you explained
2 it -- also, when I saw you out there, you were waiting,
3 you were reading, what were you reading?

4 INMATE CASTILLO: I was reading my Bible.

5 DEPUTY COMMISSIONER BLONIEN: And what part were
6 you reading?

7 INMATE CASTILLO: Actually, I was reading Psalms
8 34.

9 DEPUTY COMMISSIONER BLONIEN: To calm you down?

10 INMATE CASTILLO: Yes.

11 DEPUTY COMMISSIONER BLONIEN: Well, you seem very
12 calm, so --

13 INMATE CASTILLO: Thank you.

14 DEPUTY COMMISSIONER BLONIEN: It's my job to go
15 over what you've been doing in the institution, and I've
16 got to go back to 2001, so six years, because you haven't
17 had a hearing in that six years. I did look at, and I
18 did read, your hearing, to see if anything in there came
19 up and their recommendations to you were that you remain
20 disciplinary free, which you have. You haven't had one
21 115 in your entire period of incarceration. To get your
22 GED, which you have. To look at different self-help
23 groups, especially in the arena of life skills and
24 self-esteem, or anything that would help you deal with
25 stress, one-on-one in therapy, I think the commissioner

1 said to deal with the ghosts of your past. So, your
2 counselor's report by Counselor Corona, dated 03/07, was
3 used. I used all three psych reports. The ones by
4 Dr. R. S. Coate, C-O-A-T-E, dated 9/8 of 2000,
5 Martha Gleason, G-L-E-A-S-O-N, dated 8/25/04, and
6 Dr. Richard Starrett, S-T-A-R-R-E-T-T, dated 06 of '07.
7 You declined to do an Olsen Review, the last one you did
8 was 6/1/05, according to my records, is that right?

9 INMATE CASTILLO: Yes.

10 DEPUTY COMMISSIONER BLONIEN: Well, the
11 commissioner and your attorney and I paid very special
12 attention because there was someone else's inmate
13 intertwined -- not in your C-File but in your late mail,
14 so we're assured ourselves that you're only going to get
15 the information about you and not another inmate with a
16 name similar to yours.

17 INMATE CASTILLO: Thank you.

18 DEPUTY COMMISSIONER BLONIEN: You've had two 128s
19 and they're so old they're torn in bits in your C-File.
20 If you'd done an Olsen review of your C-File, you would
21 see that those are what's left of your 128s, little
22 pieces. And the last one, 9/15/85, so you've been
23 disciplinary free for 22 years, so you're to be commended
24 for that.

25 INMATE CASTILLO: Thank you.

1 **DEPUTY COMMISSIONER BLONIEN:** In terms of
2 education, we talked about your GED. As I was going
3 through your (inaudible) scores and your academic
4 progress, I was surprised it was -- you just got it,
5 because I think you were able to get it a long time ago.

6 **INMATE CASTILLO:** Thank you.

7 **DEPUTY COMMISSIONER BLONIEN:** And you got very
8 high grades when you took it. In terms of vocations;
9 you've completed data processing.

10 **INMATE CASTILLO:** Yes.

11 **DEPUTY COMMISSIONER BLONIEN:** And there's a
12 sequence of classes that you go through; information
13 technology, business systems, and you have all the
14 certificates, so in your -- in our board report it shows
15 the front of the certificates. In your C-File it shows
16 the back of your certificates, where you got all A's.

17 **INMATE CASTILLO:** Yes.

18 **DEPUTY COMMISSIONER BLONIEN:** Your work
19 experience; you were a sewing machine mechanic back in
20 '92, working for PIA.

21 **INMATE CASTILLO:** Yes.

22 **DEPUTY COMMISSIONER BLONIEN:** Which leads me to a
23 question; I don't know if you even remember what your pay
24 number was back then?

25 **INMATE CASTILLO:** They called it, back then, an A

1 number or a B number, but it was, I was making 65 cents.

2 DEPUTY COMMISSIONER BLONIEN: That's a lot of
3 money, back then.

4 INMATE CASTILLO: It was.

5 DEPUTY COMMISSIONER BLONIEN: And now, do you
6 have a pay number?

7 INMATE CASTILLO: I'm only making \$20 a month at
8 this time.

9 DEPUTY COMMISSIONER BLONIEN: And as a, an inmate
10 with no family on the outside that sends you money, how
11 do you take care of all the stuff you need?

12 INMATE CASTILLO: Actually, \$20 can actually buy
13 me a lot.

14 DEPUTY COMMISSIONER BLONIEN: Really? I hear the
15 prices here are very high.

16 INMATE CASTILLO: They are high, but, you have to
17 remember, too, being in a setting where there's other
18 people, you know, you have people that are actually
19 helping, that help out each other. And, also through the
20 church here, they assist in helping one another that are
21 in the community. And, I do, I tithe, and because I feel
22 that regardless of how much I have, you know, there are
23 some people that are less fortunate --

24 DEPUTY COMMISSIONER BLONIEN: Mm-hmm.

25 INMATE CASTILLO: -- even though that \$20 doesn't

1 seem like a lot. I understand that even on the outside
2 world, you know, \$20 is not a lot of money.

3 **DEPUTY COMMISSIONER BLONIEN:** No.

4 **INMATE CASTILLO:** And you can't really depend on
5 a \$20 pay number. But, I believe that by giving, you
6 always have learned that by giving you can also receive.

7 **DEPUTY COMMISSIONER BLONIEN:** Well maybe that
8 philosophy explains one other thing I observed in your
9 C-File. Is that you are, and this is serious, you are
10 the first inmate that I've ever seen who looks younger
11 now, in your photo, than you do in your picture when you
12 came in to prison.

13 **INMATE CASTILLO:** Well, actually, thank you, but
14 when I came into prison, and I've seen some of my old
15 photos, I was, it seemed like I was really run down.

16 **DEPUTY COMMISSIONER BLONIEN:** You were a mess.

17 **INMATE CASTILLO:** Yes, I was.

18 **DEPUTY COMMISSIONER BLONIEN:** And coming off the
19 drinking. And anyone who could drink two bottles of
20 vodka in one day, and continually be on drugs and
21 alcohol, it really impacts you physically.

22 **INMATE CASTILLO:** Yes, I was actually struggling
23 out there because and I understand that it paid, it
24 actually, you know, it was difficult.

25 **DEPUTY COMMISSIONER BLONIEN:** In terms of your

1 work. You're a porter, you're a clerk, you've worked in
2 culinary, there's a memo from your counselor, in your '05
3 report that says Castillo continued his participation in
4 AA, laudatory chronos, in addition to Alcoholics
5 Anonymous you recently enrolled in NA; you've also
6 participated in the annual Children's Holiday Festival.
7 Castillo remained assigned as a wing porter aid, which
8 includes a variety of clerical duties, as well as
9 assisting unit correctional counselors and correctional
10 officers in performing their daily duties. Castillo is a
11 self-motivated worker and maintains a good rapport with
12 staff and inmates alike. He is a definite asset to the
13 wing and counseling staff. And then he refers to other
14 chronos of 7/04, 10/04, and 1/05 -- reflect above average
15 scores in your -- and then looking now you've got
16 excellent and above average scores in your work. So
17 you're a good worker.

18 **INMATE CASTILLO:** Thank you.

19 **DEPUTY COMMISSIONER BLONIEN:** And when you were
20 talking to the commissioner, about work, were you trying
21 to say that you'll settle for any job? Just so that
22 you'll have work? Or were you trying to say that you
23 really have no direction and you don't know what to do?

24 **INMATE CASTILLO:** I was saying that I'm willing
25 to actually work anywhere, and no matter what the cost or

1 what the sacrifice is. I've always been a good worker;
2 I've always worked with my hands. Pretty much,
3 understandable, in different areas. And if it was to go
4 out in the fields to pick vegetables and fruits, I would
5 be satisfied with that and be happy.

6 **DEPUTY COMMISSIONER BLONIEN:** In terms of your
7 alcohol addiction, you've been in AA since 1994. And in
8 your last hearing, Commissioner Welch questioned you on
9 the different steps and you knew them all, that he asked
10 you about. My question is, this giant addiction that you
11 had to alcohol, that was such an amazing part of this
12 commitment offense, and then in, while incarcerated,
13 there's not one chrono that shows that you've had any
14 alcohol or substance abuse. How do you make sure in the
15 institution, because I know it's available, that you
16 don't have any alcohol? And how do you plan, and what do
17 you plan to use as support in the community for
18 maintaining your sobriety?

19 **INMATE CASTILLO:** Actually, after reflecting on
20 reading my transcripts, my past transcripts, the one in
21 1997, and 2001, I reflected on the questions that were
22 asked me. And I took the time to reflect on exactly --
23 about what they were asking. And I saw what they saw.
24 And I did struggle, and I'm still struggling with how to
25 answer questions, and, but seeing that being true to

1 myself is very important. If I'm going to speak a
2 certain way, I have to also live a certain way. And it's
3 -- when you're doing this and you're saying something
4 different, it's always going to haunt you. And I've
5 found that by the self-help groups, no just AA or NA --
6 yes, I did have a problem with drugs and alcohol, and I
7 do have the strength and the power to be able to say no.
8 And that's one of the things that I was going through
9 when I was young. I was under a lot of peer pressure, I
10 just wanted to fit in. I'm sorry that it's taken me this
11 long to actually admit it, but, you know, I was pretty
12 much nothing out there. But, knowing that, I can
13 actually be someone different, better, and, and
14 trustworthy, it's something that, you know, it actually
15 makes you feel better. I was struggling with my emotions
16 and the sense of, of fear. I went to drugs and alcohol
17 to try to basically cover that up, but it seemed like it
18 got worse. It became so bad that I just hit rock bottom.
19 But, just because I hit rock bottom doesn't mean that I
20 don't care for why I'm here. I understand that --

21 **DEPUTY COMMISSIONER BLONIEN:** Let me redirect you
22 back to my question though, and I understand what you're
23 saying. But my question is, someone with a big problem
24 like you had, who's been clean now in the institution, so
25 there has to be some support for you in the institution

1 that's allowed you to make the decision that you're not
2 going to drink any more. How do you bring that out into
3 the community where you don't have any support?

4 **INMATE CASTILLO:** I truly believe, I trust in my
5 faith in God, in all things. And you say there's no
6 support in the community; I believe that there is support
7 in the community, regardless of what -- but --

8 **DEPUTY COMMISSIONER BLONIEN:** What is it?

9 **INMATE CASTILLO:** It's actually, staying away
10 from it, actually, you know, staying away from those
11 things that could become a burden and --

12 **DEPUTY COMMISSIONER BLONIEN:** And you're going to
13 go to AA in the community?

14 **INMATE CASTILLO:** Yes, I am. Not am I planning
15 on to, I am, because I feel that because of the people
16 that are involved, you know, without the people there's
17 no group and there's no support and by having something
18 in common, you know, and to help overcome -- because I
19 know that even in some of the meetings that there are
20 still people struggling and, but they still need help.
21 And that's one thing, everybody needs a helping hand, but
22 you're not going to be able to help another person unless
23 you help yourself and, so, I am, you know, as I says, I'm
24 not just planning on attending AA, or NA, or any other
25 program that's necessary, I will.

1 DEPUTY COMMISSIONER BLONIEN: You've also
2 completed Alternatives to Violence, Cage Your Rage;
3 you've done individual therapy with Dr. Turini
4 (phonetic).

5 INMATE CASTILLO: Yes, I have.

6 DEPUTY COMMISSIONER BLONIEN: How was that?

7 INMATE CASTILLO: Actually, Dr. Turini, it was,
8 it helped me come out of the shell that I was living in.
9 Thinking that, you know, always doubting myself, the fear
10 of failing, but it seemed like I was holding too much in,
11 so he kind of actually helped me understand more, more in
12 depth about who I am and even, although that it was
13 one-on-one therapy, he gave me a chance to speak and he
14 took the time to listen. And I felt comfortable with
15 that.

16 DEPUTY COMMISSIONER BLONIEN: That was in 1996,
17 right?

18 INMATE CASTILLO: Yes.

19 DEPUTY COMMISSIONER BLONIEN: You've also
20 completed IMPACT, you read Bible, what else do you read?

21 INMATE CASTILLO: Actually I read, I have,
22 there's another, I read other spiritual books, I read,
23 there are so many that I read, receive through the mail.
24 In Touch magazine, it's a pastor that's sold on TV,
25 Stanley Reid, no, Charles Stanley, I'm sorry. And I read

1 other spiritual books. I, I try not to get too involved
2 in fiction or paperback books because, you know, I'm just
3 not interested. I don't even watch too much TV.

4 **DEPUTY COMMISSIONER BLONIEN:** You play sports?

5 **INMATE CASTILLO:** Yes, I do.

6 **DEPUTY COMMISSIONER BLONIEN:** What do you play?

7 **INMATE CASTILLO:** I play, here we play flag
8 football, also softball, basketball --

9 **DEPUTY COMMISSIONER BLONIEN:** I saw certificates
10 for softball in there.

11 **INMATE CASTILLO:** Yes, I remember when I was
12 younger, when my father actually used to throw the ball
13 with me and basically, when I was, our family used to
14 actually participate with other families when my father
15 was in the military and play softball. So, that actually
16 kid of helps me, you know, kind of do my time, even
17 though that it's only for a couple of months during the
18 year.

19 **DEPUTY COMMISSIONER BLONIEN:** I think reading the
20 spiritual books and internalizing the values is very
21 good. I'd also recommend that you read about re-entry
22 into the community. You didn't have much of a chance to
23 establish yourself as a person before you came into the
24 institution, and the world has gone fast while you've
25 been in here and I think it would be really good for you

1 to think about re-entry and what the community is like
2 now. And read books that would help you come up with a
3 plan for successful re-entry. There's videos available
4 here; I know PIA has them, that I think you could get
5 access. Just simple things like how to rent an
6 apartment, how to get a social security number, how to
7 write a resume, how to think about transportation, it's
8 very different now.

9 **INMATE CASTILLO:** I understand.

10 **DEPUTY COMMISSIONER BLONIEN:** It would be really
11 good, really, really good for you. I'm looking at the
12 current psych report by Dr. Starrett. He notes that,
13 under his diagnostic impressions, that your
14 poly-substance dependence is in institutional remission
15 and treatment, under Axis I. Under Axis II, an
16 antisocial personality disorder that's attenuating with
17 age and maturity, that means it's diminishing. That he
18 gives you a global assessment score of 90, which is a
19 highly functioning inmate and a highly functioning
20 individual in the community. And concludes that this
21 inmate would be considered no higher risk for violence
22 than any other citizen within the community, especially
23 if he continues to use support services. And then he
24 goes into detail about the test that he administered to
25 you after he reviewed your file and he talked to you.

1 And the PCL-R, which states your level of psychopathy,
2 that your level of psychopathy is low. That in rating
3 you historically, the individual, on the historical
4 factors that predict future violence, the inmate would
5 rate in the moderate range. This rating is based on the
6 inmate being involved in unstable relationships, not
7 established in a career, being a substance abuser, having
8 early maladjustment problems, and to a lesser event,
9 prior supervision failures. So those are factors that
10 are never going to change, that's your historical. The
11 clinical insight; in rating the inmate on the clinical
12 insight factor, the inmate would rank in the low range
13 for his propensity for future violence. The inmate would
14 also rate in the low range on his risk assessment in
15 terms of risk management, that there is an elevation on
16 this variable due to the inmate not having his parole
17 plans completely developed, and not having a community of
18 resources. But the inmate's overall risk assessment in
19 the future for violence has now moved from the high end
20 of the moderate range to the low range on the clinical
21 risk management factors. So, overall, the inmate's
22 overall risk assessment in the future for violence has
23 now moved, again, from the high end to the moderate
24 range, down to the low range, on the clinical and risk
25 management factors. In talking about, the last panel

1 asked the significance of alcohol and drugs as it relates
2 to the commitment offense and an estimate of the
3 prisoner's ability to refrain, the inmate openly
4 acknowledges that his use of alcohol is a major factor in
5 the commitment offense. The inmate acknowledges that the
6 night of the offense, he and the victim drank
7 approximately two fifths of vodka. The inmate realizes
8 that the alcohol impaired his judgment. The inmate also
9 realizes that he was scared and over-reacted. This
10 overreaction was due in part to his childhood of fear and
11 abuse and of being fearful of adults. The inmate has
12 been active in AA or NA for 12 to 13 years. The inmate
13 has been clean and sober for about 18 years. He
14 acknowledges that substance abuse has been a major life
15 problem. He also understands the need for a lifelong
16 treatment. It is recommended that he continue ongoing
17 substance abuse treatment and relapse prevention as a
18 condition of his parole. And we went back and looked at
19 the psych report by Dr. Gleason; who said the inmate's
20 violence potential within a controlled setting is
21 considered to be significantly below average relative to
22 this Level II population. On one hand the inmate did
23 have a significant juvenile and adult history and, again,
24 factors within his environment may explain that juvenile
25 history. However, upon the time of incarceration for the

1 present offense the inmate was able to soon after
2 completely turn his life around and has managed not to
3 get in any disciplinary issues for his entire
4 incarceration. Therefore, in light of the base factors,
5 his violence potential is below average relative to his
6 Level II inmate population. Within the community, after
7 15, 16 years of no disciplinary problems, this inmate
8 would be considered to be no higher risk for violence
9 than any other citizen within the community, especially
10 if he continues to use supportive services. Dr. Gleason
11 said that you are confident, responsible, that you have
12 the capacity to abide by institutional standards and has
13 overwhelmingly done so during his incarceration period.
14 So that was the psych report that never even got into a
15 parole hearing because you didn't have one after the
16 psych report was done and it was a very supportive psych
17 report and she also gave you a global assessment
18 functioning score of 90. And then I just looked back on
19 Dr. Coate, who also gave you a global assessment
20 functioning score of 90. And it's amazing to me that a
21 person of your family background, with what you, with
22 what your reality was as a child, that you could come to
23 prison and have three psychologists in a row give you a
24 global assessment functioning score of a highly
25 functioning individual. And that all has to be on the

1 work that you did while you were in prison.

2 INMATE CASTILLO: I understand.

3 DEPUTY COMMISSIONER BLONIEN: Because you didn't
4 come in with, with that ability.

5 INMATE CASTILLO: I know. I was given the
6 chance.

7 DEPUTY COMMISSIONER BLONIEN: How do you feel
8 about getting out of prison? Is that scary to you?

9 INMATE CASTILLO: It is going to be scary for me.
10 As I said, I understand that, you know, change is out
11 here, everybody's grown, everything has expanded and,
12 and, so, I guess I can say I'm only ready for the
13 challenge.

14 DEPUTY COMMISSIONER BLONIEN: And with that I'm
15 going to return back to the chair.

16 PRESIDING COMMISSIONER KUBOCHI: Thank you. I
17 just got a quick question, I note that you participated
18 in Dr. Bateman's Life Skills group. It was a long time
19 ago, in 1994. Do you remember that class?

20 INMATE CASTILLO: Yes, I do remember of his
21 classes, they were --

22 PRESIDING COMMISSIONER KUBOCHI: Tell me about
23 that, how many, how many classes, people in it and the
24 structure of the, the way the class was conducted.

25 INMATE CASTILLO: If I recall there was about 13

1 to 15 individuals participating. And the subjects, or
2 the themes, I think there were seven. I'm not sure
3 exactly what they were in order, and what they involved,
4 but it was self-esteem was one of them.

5 PRESIDING COMMISSIONER KUBOCHI: Mm-hmm.

6 INMATE CASTILLO: Drug addiction, and alcoholics.

7 PRESIDING COMMISSIONER KUBOCHI: Do you remember
8 how many classes there were?

9 INMATE CASTILLO: Seven, seven classes.

10 PRESIDING COMMISSIONER KUBOCHI: Seven. And how
11 many minutes or hours was each class?

12 INMATE CASTILLO: Actually, we, actually, I think
13 it was an hour, hour and a half, at a time.

14 PRESIDING COMMISSIONER KUBOCHI: Now, these are
15 recorded, they happened a long time ago, what did you
16 think of those classes? Did you learn anything from it?

17 INMATE CASTILLO: Yes, I did learn something out
18 of them, and I think it has to do with who I am today.
19 By actually taking the time to listen and reflect what's
20 being explained by somebody that is actually trained in
21 that area. And by helping us open up with each other,
22 because there was a lot of role-playing and we were given
23 the freedom to actually express what we feel of
24 everything that was brought up and so, you know, just,
25 just participating, being able to be listened to, was

1 actually something I really enjoyed and regardless of the
2 subject. And, and basically that's it.

3 PRESIDING COMMISSIONER KUBOCHI: Would you do it
4 over again if they had it?

5 INMATE CASTILLO: Yes, I would.

6 PRESIDING COMMISSIONER KUBOCHI: Okay, thanks. I
7 have no further questions. At this time, Mr. Castillo,
8 we're going to allow questions from anybody here. And
9 then that's followed by final statements. So I'm going
10 to ask Commissioner Blonien, do you have any questions on
11 any topics covered?

12 DEPUTY COMMISSIONER BLONIEN: No, I asked all my
13 questions, thank you.

14 PRESIDING COMMISSIONER KUBOCHI: And we're going
15 to ask Mr. Carbaugh, do you have any questions?

16 DEPUTY DISTRICT ATTORNEY CARBAUGH: No, sir.

17 PRESIDING COMMISSIONER KUBOCHI: And Mr. Gunning?

18 ATTORNEY GUNNING: I don't, thank you.

19 PRESIDING COMMISSIONER KUBOCHI: That makes it
20 unanimous, Mr. Castillo, we're now going to have final
21 statements. You're going to be third and you're going to
22 be the last person we hear from before going into recess
23 for deliberations.

24 INMATE CASTILLO: Yes, sir.

25 PRESIDING COMMISSIONER KUBOCHI: Mr. Carbaugh?

1 DEPUTY DISTRICT ATTORNEY CARBAUGH: Thank you, I
2 thought the inmate made an excellent presentation here
3 today. His demeanor is very calm. He's relaxed. It's
4 funny, I was talking to Mr. Gunning in the hallway
5 earlier today and we were talking just generally about
6 doing lifer hearings. And I think one of the things, we
7 agreed on most things, but one of the things we really
8 agreed on is the concept that probably you, as members of
9 the board feel at times, of the wasted lives concept of
10 someone who is very obviously very bright, very
11 articulate, and then does really bad stuff years ago.
12 You wonder what the potential could have been, and I
13 would imagine the inmate probably thinks about that too,
14 once in a while. Of all the things he could have done
15 had the decisions been better back in, back in those
16 days. And it's just as a member of society you could
17 have seen this person at this stage in his life without
18 the crime being very successful in business, or life, and
19 all sorts of things, and what an extreme shame that is.
20 And I'm just, you know, talking as a member of the
21 community. I, as I said as a moment ago, I thought he
22 came across very well, very articulate, very bright, very
23 calm. There would be issues that are of some concern. I
24 think the commissioner hit on them a little bit earlier
25 in the hearing, about the job plans and sort of a lack of

1 specifics there, that's an issue. Another issue to me is
2 when the life crime was committed he was on parole for a
3 serious felony, a residential burglary. He was on parole
4 and I guess violated parole two or three times and then
5 the life crime was committed. That's a red flag to me,
6 to be very honest with you, with all the positives. And
7 I think there are a lot of positives with this inmate.
8 That does concern me if he was to be placed on parole.
9 He didn't seem to make it the last time, although that
10 was a long time ago and those are issues of concern for
11 me and I would think they might be of concern for the
12 board too. Thank you for your time.

13 **PRESIDING COMMISSIONER KUBOCHI:** Mr. Gunning?

14 **ATTORNEY GUNNING:** Thank you. I guess I'll
15 address the panel from the standpoint of, I guess,
16 chronologically in Mr. Castillo's case because I think
17 it's probably the best way to handle it. So I guess I'll
18 start with pre-conviction factors. I'm not going to
19 rehearse (sic) what you already know, but, to sum it up,
20 it's quite apparent that the way he grew up severely
21 impacted his life at an early stage. I think,
22 Commissioner, you indicated that we don't pick our
23 families and that's true. And oftentimes we don't pick
24 how we're treated by those families either. And given
25 the comments made by the psychologists I think it's

1 pretty clear that what happened to him, as the oldest
2 child in that particular family, and upon the death of
3 his mother, was pretty horrendous and that impacted his
4 life up until the time of the commitment offense, and I'm
5 sure it even does it today. Although he's got a better
6 grip on what it was that was causing those problems now.
7 I'm not offering this by way of an excuse in any way.
8 I'm just offering it by way of explanation. Something
9 you probably already realize, but I'm doing this for the
10 record. Because we have to find out why people do things
11 and once we understand why they do them then we can
12 correct that behavior. In his particular case he was
13 somebody who was lost, was the word he used with me. And
14 I think that's an accurate assessment. No direction,
15 little guidance, parents or otherwise, to be quite honest
16 with you. Especially upon the death of his mother when
17 he was, at 13. He was basically on the streets from the
18 time he was 12, or 13 years old, and at the time he
19 starts running into the law, in the early eighties.
20 Fending for himself, it's something out of Dickens in
21 some respects, when you think about how, what he was
22 living with. On his own at that time. I can't think of
23 many -- I would hate to be a young teenager trying to
24 survive on my own, on the streets. And, of course, that
25 leads into his alcohol use, his drug use and that

1 eventually leads into who he hangs with, of course, and
2 then without a doubt that's one of the reasons that he
3 got involved in this commitment offense was because of
4 his obsessive drinking. In this particular case it was
5 the use of the vodka and then Mr. McCardy lost his life
6 as a result of that and it, that's why we're here. I
7 don't think there's any evidence in the file to indicate
8 there's any premeditation on his part; because this is a
9 second degree murder conviction. It is a plea. We don't
10 have any trial transcripts to speak of. But he has
11 accepted responsibility for his involvement in this
12 particular offense and it's been since 1988. Since he's
13 been incarcerated for the offense, we're looking at 19
14 years now, for a second degree. At some point I think
15 the matrix becomes important in his particular case, from
16 the standpoint of suitability and the use of the
17 commitment offense against him, to deny parole. And then
18 he's made a remarkable transition since he's been
19 incarcerated and it's ironic to think that somebody has
20 to lose his life for another individual to better their
21 lives. It's just a horrendous, it's a terrible thing to
22 contemplate, but that's what's happened here. Since his
23 incarceration, it's obvious that he changed his life.
24 He's got great work skills, he's got vocational skills;
25 it took him a long time to get his GED, but he got that.

1 Good psychological evaluations, good self-help
2 programming; been in AA for an extensive period of time.
3 His faith is important to him. Probably something he
4 didn't have before. So, in addressing, you know, the
5 DA's comments about his being on parole and, you know,
6 concerns, I understand that but at the same time, he has
7 different coping skills now than he had before. He's
8 developed them over a long period of time, he's now 42,
9 he's not 23 any more. So, he's made remarkable progress,
10 I would ask you to give him credit for that. I would
11 concur that he needs to work a little harder perhaps on
12 the parole plans. He's making an effort, he's being
13 proactive, but I think, in his particular case, where the
14 structure's not out there, he needs to go into a
15 transitional housing in some capacity. Because while
16 he's in the housing, he can stay there for months at a
17 time, receive the, the therapy he needs; group therapy to
18 include whatever, whatever residual effects are left over
19 from his family, but also the alcohol and drug use issues
20 as well. But outside of that I think he's made
21 remarkable progress and I think he's very, very close to
22 being a viable candidate for parole. And I'll submit.

23 **PRESIDING COMMISSIONER KUBOCHI:** Thank you,
24 Mr. Gunning. Mr. Castillo, this is your opportunity to
25 address the panel.

1 **INMATE CASTILLO:** Thank you. First of all, for
2 the record, I would like to first take the time to
3 acknowledge the family of John McCardy, the
4 representatives of John McCardy, and district attorney
5 and commissioners of the Board of Prison Terms. It's
6 always difficult to be faced with something that's so
7 tragic, so tragic, and devastating. And to have to
8 reflect on what I've done. I'm very sorry. I'm sorry
9 for the pain I've caused, the burden that I have been to
10 the families involved, the system, the law enforcements,
11 and everybody that was affected by what I've done. I
12 will continue to strive to do whatever's possible to
13 better myself, to be a better person, to do what's right.
14 To the best of my ability I will be supportive when
15 there's needed support. And if I was given the chance to
16 parole, I will continue to strive to do what is right. I
17 understand that there's nothing that will outweigh for
18 what I'm here for, but to strive, not just for myself but
19 in remembrance of why I'm here. To do what's right and
20 to the best of my ability. Thank you.

21 **PRESIDING COMMISSIONER KUBOCHI:** Thank you very
22 much. Mr. Castillo, we're going to be in recess, it is
23 2:25 p.m.

24 **R E C E S S**

25 **---o0o---**

1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER BLONIEN: We are back on
4 record.

5 PRESIDING COMMISSIONER KUBOCHI: We're back
6 to state the decision reached in the matter of Francisco
7 Castillo. Mr. Castillo, we're going to deny you parole
8 for one year. There is no doubt that we're impressed
9 with all the work you've done and the main thing to work
10 on, to carry out with you today, is that you've
11 accomplished every goal you've set out in the
12 rehabilitation field that is personal. You got to work
13 on your parole plans.

14 INMATE CASTILLO: Yes, sir.

15 PRESIDING COMMISSIONER KUBOCHI: And what I, what
16 I'm going to just brainstorm with you is -- the rules
17 would say that you return to the county of commitment,
18 okay. So there's two issues in regard to any, any parole
19 plans, residence and what I call self-sufficiency. You
20 don't need to have a job offer. But you want to be able
21 to establish that you're self-sufficient. With a lot of
22 humility and sincerity you are willing to take any job,
23 which is good. But, I'm going to break it into two
24 parts. So therefore you're going to want to consider

25 FRANCISCO CASTILLO C-85768 DECISION PAGE 1 6/27/07

1 parole plans in Los Angeles County. One thing that we
2 didn't bring up, is we noticed that you have a Bible.
3 Now the law, the rules say, oh, we can't have any
4 recommendations based on religion. You're carrying a
5 Bible, we only want to relate to you, you might consider
6 whether or not your faith has a church, you know, the
7 organization -- I'm not going to get into technicalities,
8 but the organization of your church in LA may have, and
9 may sponsor or may be associated with a residence
10 program. I've seen that in other cases. Where there's
11 legitimate residence, transitional residence programs for
12 a combination -- it could be homeless, substance abuse,
13 people transitioning from institutions. We've seen the
14 stuff from the parole, it's going to be solid. You also
15 might consider non-profit groups and you can talk to the
16 correctional counselor you could talk to your religious
17 people. A for-instance, and I'm certainly not
18 recommending it, is, there's non-profits like Delancey
19 Street that have residence programs in Los Angeles. Now,
20 in that regard, because I like to break things down to
21 finite detail, there's going to be some residence,
22 transitional housing programs that will say until you
23 show up to our doorstep we can't commit that you're going
24 to have a bed space, because they have a lot of people
25 **FRANCISCO CASTILLO C-85768 DECISION PAGE 2 6/27/07**

1 asking for bed spaces that are limited. But that's not
2 going to be a deterrent, that's understandable, that's
3 their rules. But at least find out what those, what
4 groups, what they're admission standards are, how long
5 you can stay there, if there's any cost, whether they'd
6 waive the cost. I've seen waivers, I've seen ones where
7 it's 2500 a month, but since you're transitioning out, we
8 know all about you, we're going to waive our cost, or
9 they're going to -- you can work here to work off the
10 cost or whatever. But, and make sure you ask all those
11 questions. And what kind of staff they have. Whether
12 there's somebody there that's a trained psychologist, job
13 counselor, etcetera, etcetera. So that opens up that.
14 Now, from a -- your, your faith, since you mentioned
15 you've met people from the outside here through your
16 religion, maybe there's other local ones that you can
17 work with parole, once they investigate, anywhere where
18 your church is, that has a residence program. So really
19 start using your imagination to expand on that. What
20 you're looking for is a reputable organization that
21 operates transitional housing, what I call transitional
22 housing. People from, transitioning from an institution
23 back into society. It can include homeless or whatever.
24 You're going to find that those institutions may be a

1 better fit than if everybody's a lifer, for instance, and
2 it's directed to you by Paroles, okay. In regard to
3 self-sufficiency, that is, as I've indicated, the
4 regulations don't require you to have a job, but you're
5 going to want to consider the marketable skills you've
6 developed here and to determine what type of jobs you
7 want on the outside. If you've learned a trade, see what
8 the trade unions are. If you've leaned a skill, what
9 type of skill's there; the brochures as far as your
10 training once you get out is pretty good. But then
11 that's a cart and a horse; you know, unless you have
12 housing that's not going to charge you, you're not going
13 to be able to go to a free vocational program that parole
14 and the local government agencies lined up. That's why
15 you have to put some thought into that.

16 **INMATE CASTILLO:** I understand.

17 **PRESIDING COMMISSIONER KUBOCHI:** Okay, so I think
18 it's the housing first then start exhausting what type of
19 job opportunities there are. Because it's important, I
20 think, for you to understand how dedicated and
21 level-headed and how much stress you have to cope with by
22 starting that job search now. In other words, get the
23 rejections over with now. In other words, write to these
24 trade unions or whatever and let them say, until you walk

25 **FRANCISCO CASTILLO C-85768 DECISION PAGE 4 6/27/07**

1 through our door we don't want to talk to you, or we have
2 no openings now. Start that now, because that way you
3 can convince the panel that's an additional factor of
4 your maturity and your ability to cope with stress. Your
5 plans right now, they sound good, but if I was in your
6 position I wouldn't trust anybody but myself to get
7 myself residence and job opportunities. In other words
8 you don't want the image that if we released you on
9 August 1st, that you're going to be curbside right outside
10 of Soledad, right there on Highway 101. That's the image
11 you don't want to project. But willing to take any job.
12 I'm not saying that's you, but it's going to be up to you
13 to dig these resources. Then you're going to show you're
14 self-sufficient, you're going to show the skills, coping
15 skills, that you've developed here and I think you're
16 going to have a completed picture. Now, because all of
17 this is subject to appellate review, in looking at the
18 nature of the commitment offense and the intoxication and
19 to this day we don't even know the motivations of why the
20 homicide was committed, the parole plans right now are,
21 is the hub of the wheel. That is, unless you get solid
22 parole plans, the problems with housing, the problems of
23 being self-sufficient, could create stress factors that
24 were documented in your prior history in regard to an

1 example of you being on parole for the residence burglary
2 and when you don't have food, clothing and shelter issues
3 secured, you're going to be back in a stressful situation
4 and the psychologists all say that that is a great fear.
5 For purposes of suitability, it's all positive, but I'm
6 just saying, for appellate review, why the parole plans
7 are so important. It could, not having good parole plans
8 could trigger all these other stressors that the doctors
9 are recognizing and I'm just saying why there's other
10 issues we considered in denying you parole today, other
11 than your parole plans. But the parole plans are at the
12 hub of these other issues that the doctors addressed;
13 including the prior failures on parole and coupled with
14 the facts surrounding the homicide that included
15 substance abuse and -- a homicide that was just committed
16 in exceptional disregard for human suffering. In that
17 his person was murdered in his own home by a guest, which
18 was you, Mr. Castillo. So, don't -- I told you what the
19 main issues were because legally we have to explain all
20 the reasons and all the factors we considered for denying
21 you. But I wanted you to walk out of here with hearing
22 the most important things first.

23 INMATE CASTILLO: Thank you, sir.

24 PRESIDING COMMISSIONER KUBOCHI: Okay, but I'm

25 FRANCISCO CASTILLO C-85768 DECISION PAGE 6 6/27/07

1 obligated to explain why we believe that you're not
2 suitable for parole today and would pose an unreasonable
3 risk if, to society, if released. And I started off by
4 talking about the most important thing, but I don't want
5 some appellate court to think well, geez, they ignored
6 all these other positives. Now we recognize all these
7 other positives. We are encouraging that you continue
8 on, but we have to, legally, we have to state for the
9 record these other factors, such as the way the crime was
10 committed. The factors involved with that as well as we
11 share the doctors' concerns that until parole plans are
12 firmed up the biggest, the biggest, the only indicators
13 for you to get re-involved with criminal behavior would
14 be a relapse into drug and alcohol. Now, another thing,
15 in closing, that would really, I think, benefit you is
16 because you are committed to AA, do you have a sponsor in
17 AA?

18 **INMATE CASTILLO:** I don't have a sponsor at this
19 time, but I am in search for one.

20 **PRESIDING COMMISSIONER KUBOCHI:** Yeah, and that's
21 understandable, is, talk to the people on the outside, if
22 they come in, if you have any situation where people from
23 the outside come in to participate in AA, about a relapse
24 prevention program. I'm not saying it's a condition for

25 **FRANCISCO CASTILLO C-85768 DECISION PAGE 7 6/27/07**

1 release, but what that is, is it's actually something you
2 put together for you that describes the stresses in life
3 that you anticipate, that you had in the past, that
4 affect you, the coping mechanisms that you've developed
5 through your commitment to AA and rehabilitation that
6 will allow you to handle this stress in a nondestructive
7 manner. And then your commitment to pursuing AA on the
8 outside. It's actually, it's actually something that you
9 write for yourself, it's a relapse prevention plan. And
10 I think in doing so you're going to eliminate any doubt
11 that the psychologists have. And like I says, I'm only
12 explaining this in a lengthy manner because I, we're not
13 elaborating all the reasons why we made our decision,
14 because I didn't want to make you feel that there's all
15 these other things that you didn't satisfy us in, in, in
16 your rehabilitation. Because that would be paint a
17 negative picture. You've impressed us positively -- you
18 know, there's a word, it's like a, what do they call -- a
19 cyclone?

20 INMATE CASTILLO: Yes.

21 PRESIDING COMMISSIONER KUBOCHI: That, that, the
22 parole plans are the eye of the hurricane. If you can
23 control that every other issue will get blown away.
24 Without solid parole plans, the cyclone of problems start

25 FRANCISCO CASTILLO C-85768 DECISION PAGE 8 6/27/07

1 taking off again, and that's why I didn't elaborate too
2 much into the life crime and all these other factors.
3 Because I don't want you walking out of here doubting
4 whether you impressed us with your rehabilitation and I
5 wanted you to make sure that the two things that you
6 really have to work on, parole plans and relapse
7 prevention plan. And talk to somebody who has
8 successfully been in AA for a long time, that's why I
9 mentioned talking about the outside, because anybody on
10 the outside that has been clean and sober for 10 years on
11 the outside, has created a relapse prevention plan, I
12 guarantee you. That's part of the final steps of
13 rehabilitation. Which is a never-ending process by the
14 way. That's why they call it recovering alcoholics or a
15 recovering addict. So with that in mind, I wish you
16 luck, like I says, I never say this, I was impressed by
17 you.

18 **INMATE CASTILLO:** Thank you, sir.

19 **PRESIDING COMMISSIONER KUBOCHI:** Okay,
20 Commissioner?

21 **DEPUTY COMMISSIONER BLONIEN:** Good luck to you.

22 **INMATE CASTILLO:** Thank you.

23 **ATTORNEY GUNNING:** Thank you.

24 **PRESIDING COMMISSIONER KUBOCHI:** It's 2:58 and

25 **FRANCISCO CASTILLO C-85768 DECISION PAGE 9 6/27/07**

1 this matter's concluded.

2 INMATE CASTILLO: Thank you, sir.

3 PRESIDING COMMISSIONER KUBOCHI: -- he's got a
4 shot. Oh, I handed it to him.

5 ATTORNEY GUNNING: Oh, you did?

6 PRESIDING COMMISSIONER KUBOCHI: Yeah, go check
7 to see, maybe I handed him the wrong one.

8 DEPUTY DISTRICT ATTORNEY CARBAUGH: That guy can
9 make it.

10 PRESIDING COMMISSIONER KUBOCHI: Yeah, he will.

11 DEPUTY DISTRICT ATTORNEY CARBAUGH: That guy can
12 make it.

13 PRESIDING COMMISSIONER KUBOCHI: Oh he will.

14 A D J O U R N M E N T

15 --oOo--

16

17

18

19

20

21 PAROLE DENIED ONE YEAR

22 THIS DECISION WILL BE FINAL ON: OCT 25 2007

23 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT
24 DATE, THE DECISION IS MODIFIED.

25 FRANCISCO CASTILLO C-85768 DECISION PAGE 10 6/27/07

**CERTIFICATE AND
DECLARATION OF TRANSCRIBER**

I, SHELLEY KELBER, a duly designated transcriber, NORTHERN CALIFORNIA COURT REPORTERS, do hereby declare and certify under penalty of perjury that I have transcribed one audio recording which covers a total of pages numbered 1 - 58, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of FRANCISCO CASTILLO, CDC Number C-85768, on JUNE 27, 2007, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned audio recording to the best of my ability.

I hereby certify that I am a disinterested party in the above-captioned matter and have no interest in the outcome of the hearing.

Dated SEPTEMBER 6, 2007 at Sacramento,
California.

A handwritten signature in dark ink, appearing to read 'Shelley Kelber', is written over a light blue horizontal line.

Shelley Kelber, Transcriber

Northern California Court Reporters

EXHIBIT "B"

**PSYCHOLOGICAL EVALUATION
FOR THE BOARD OF PAROLE HEARINGS
JUNE 2007 SUBSEQUENT CALENDAR
FORENSIC ASSESSMENT DIVISION
CORRECTIONAL TRAINING FACILITY**

I. IDENTIFYING INFORMATION

Inmate Name:	Castillo, Francisco
CDC Number:	C-85768
DOB (<i>Current Age</i>):	02-20-1965 (<i>currently 42 years old</i>)
Controlling Offenses:	PC §187, Murder Second Degree
Date of Offenses (<i>Age at time</i>):	02-24-1988 (<i>then age 23</i>)
Sentence:	15 years to Life
County of Commitment:	Los Angeles County
Date Entered into CDCR:	07-15-1988
Date Received at Soledad State Prison:	October 1988
Classification Score:	19
CDCR Forensic Evaluator:	Richard Starrett, Ph.D.
Date of Evaluation:	04-02-2007

II. SOURCES OF INFORMATION

The inmate's Central File (C-File) and Unit Health Record (UHR) were reviewed. He was interviewed for the purpose of the current evaluation on April 2, 2007. He was informed that the interview was not confidential and that a report with the results of the evaluation would be submitted to the Board of Parole Hearings (BPH) to assist in determining his suitability for parole. The inmate appeared to understand the nature and purpose of the evaluation, and the possible consequences of the interview to the best of the inmate's ability. Unless otherwise indicated, the inmate agreed to participate in the interview. For reasons not limited to the possibility that an individual may have a mental disability or condition, which may qualify under the Americans with Disabilities Act, the evaluation was conducted by a licensed psychologist. Also, it is the conclusion of the undersigned examiner that it was not necessary to provide auxiliary aids or assistance to achieve effective communication. This evaluator is not responsible for any inaccurate statements, or subsequently changed opinions, expressed by the inmate.

This current report is an addendum for update to the BPH, and only information relevant to the current assessment, and more recent to prior reports, will be addressed. The report from 2000, written for the inmate's prior BPH Subsequent Hearing, should be consulted for any questions or concerns regarding background information unless clarified otherwise below.

III. QUESTIONS POSED BY MOST RECENT (2004) BPH

After the inmate's 2004 BPH hearing, the panel asked for a full psychological evaluation; however, a BPH Form 1000(a) was not completed or located. Questions addressed in this evaluation will include:

- 1) The prisoner's violence potential in the free community; and,
- 2) The significance of alcohol/drugs as it relates to the commitment offense and an estimate of the prisoner's ability to refrain from the use/abuse of same when released.

IV. INTERVIEW INFORMATION

At the outset of the interview for the purpose of this report to the Board of Parole Hearings, the planned focus was to update any information relative to the most recent full evaluation, as well as to deal with any unexamined issues relative to intrapersonal functioning at the time of the index offense.

Mr. Castillo is a 42-year-old, single, Filipino male of Christian religion. The inmate was oriented to person, place and time. He was alert and cooperative. His simple registration was intact, as was his short-term memory. His simple abstract thinking was impaired. His mathematical ability was intact and his complex problem solving was impaired. He did not understand proverbs.

At the current time, he denies any problems with depression, anxiety, mood swings, or symptoms of a mood disorder. He denies any auditory or visual hallucinations, and evidences no delusional or paranoid thinking. He denies any eating or sleeping problems. He denies any mental health problems as a child. He denies any suicidal or homicidal thinking. The inmate denies that he currently has any health problems or is being treated for any health problems.

INSTITUTIONAL PROGRAMMING: The inmate was received into California Department of Corrections on July 15, 1988. The inmate's current classification score is lifer mandatory minimum of 19, as of October 25, 2006. The inmate's points have always been low. The inmate's points were highest back in the late 1980s when he was close custody. The inmate has never received any CDC-115s, or CDC-128A Counseling Chronos. The inmate has never had any CDC-115s for addictive behavior, violence or sex related actions while in prison. The inmate completed six years of formal education in the community. He received his GED in 2005, while incarcerated. The inmate has a vocational trade completion in data processing. He is currently a clerk, or a wing aide, and has been for about the last four years. Other jobs included being in education, PIA textiles for almost seven years, clerk, and porter. Most of his positions have been as a clerk. The inmate is currently involved in AA and NA, and has been since 1994 (almost 13 years). The inmate is currently involved in a faith-based Anger Management class and Alternatives to Violence. The inmate started his involvement in self-help groups in 1992, and has completed about six or seven group offerings. The inmate is reportedly active in his church, and attends worship services on Sundays, Wednesdays and Thursdays. The inmate states that he believes a number of his work duty assignments are related to his religious activities.

INSIGHT / SELF ASSESSMENT: The inmate states that he feels that his greatest personal strength is the understanding of why he is here, his ability to change himself, in terms of his actions and communications with people, and his understanding of people's problems. The inmate states that his weaknesses are his inability to forgive himself and, in the past, his use of alcohol or drugs. The inmate states his biggest accomplishments in which he takes the most pride is earning his GED. The inmate states his biggest change is his "outlook on life, not being angry anymore, and accepting responsibility for what I have done."

PAROLE PLANS IF GRANTED A RELEASE: The inmate states that he is going to parole to Los Angeles. He is looking for a halfway house, but as of yet he does not have a job offer. He has not been able to make any contacts with the community for support. The inmate plans to be active in AA, NA, self-help and his religion when he gets out. He is looking into a Victory Outreach program right now.

INMATE UNDERSTANDING OF LIFE CRIME: The inmate was charged with PC §187, Murder Second Degree.

Summary of the Crime: On 2/24/88, at approximately 1945 hours, the victim's wife, Linda McCurdy, returned to her home at 375 North Ridgewood Place in Hollywood. When she entered the den of the house, she discovered the body of her deceased husband, victim John McCurdy, seated in a chair in the living room. As she checked the victim's pulse, she saw a male seated on the couch in the living room near the victim. Thinking that this person was also deceased, she went to the den where she picked up a phone and called 911. While on the phone she heard footsteps in the living room and then observed the male who had been seated on the couch walking out the front door of the residence. The suspect fled on foot. There was extensive ransacking to the upstairs and downstairs areas on the house. Noted missing in the days following the murder was one hundred dollars in currency taken from the victim and one wristwatch valued at \$75.00. After investigation, the detectives utilized the department's computer system to identify a friend of the victim. Based on the possible name, physical description, tattoo, and possible birth date of 2/20/65, Detectives located the CI&I arrest record for Francisco Parnala Castillo Jr., who has a birth date of 2/20/65. Fingerprints taken from the Subject tentatively matched prints lifted from a cigarette case that was in the victim's residence. The tread pattern on the Subject's tennis shoes matched the pattern of a bloody shoe print on the victim's floor. Page six (6) picture photo displays containing a photo of the Subject was shown to the victim's wife who identified the Subject's photo as being of the same person she had seen at the door on 2/2/88. A family housekeeper also positively identified the photo of the subject as being a person who had visited the victim on 2/19/88. Detectives searched the area outside the subject's father's apartment and recovered a blue and black long sleeved shirt from underneath the stairwell. The Subject's father said that the Subject had slept in that area on the eve of the murder. Both the tennis shoes and the shirt tested positive for the presence of blood. Prior to being interview by detectives on 3/3/88 the Subject was advised of his rights and he waived them. The interview was tape-recorded and after being confronted with his contradictive statements the Subject admitted to stabbing the victim. He said that he and the victim had been drinking vodka for quite a while and that he and the Subject were drunk. (Source document: P.O.R. pages 3-6)

"Prisoner's Version: Upon interviewing Inmate Castillo, this writer is bringing the prisoner's statement forward from when he was in the Los Angeles County Jail. It should be noted that the Subject was in the L.A. County Jail for a Parolee at Large/Absconding and for Homicide. When Mr. Castillo was interviewed by the LAPD homicide detectives, Subject admitted the following. Castillo waived his rights and initially stated that he had been over to the victim's residence on two occasions. Castillo stated that he did not know that the victim was dead and he did not own the blue and black plaid shirt. After confronting the suspect with the contradictory statements, he admitted that he had been over to the victim's residence on more than two occasions. He then admitted that he had stabbed the victim. He stated that on Wednesday, 2-24-88, at approximately 3 o'clock he was standing on the corner of Beverly Boulevard and San Andrew's place in Hollywood with his brother Mario, his neighbor Barney Leigh, and a friend of Barney's when he observed the victim in the liquor store parking lot at the Northeast corner of Beverly Boulevard and San Andrew's Place. He stated that he went over to the victim and they talked. He said that the victim had just purchased a pint of Vodka and appeared intoxicated. He and the victim walked to the victim's home. The victim had his bicycle with him and walked it along with them.

Upon arriving at the victim's home they went inside via the front door, which the victim unlocked using his key, and sat down in the living room. He stated that they drank vodka for quite awhile. He was now drunk. He said that the victim began telling him that he had a gun and was a good shot. He said that the victim stood up, approached him and grabbed him by the back of his neck. He said that he pushed the victim back causing him to fall into the living room armchair. He then went into the kitchen arming himself with a small kitchen knife. He returned to the living room, approached the victim and they struggled over the small knife. The victim was able to grab the blade and break it. The suspect stated that he tossed the knife away and went back into the kitchen, arming himself with a much larger knife. He again approached the victim, who was sitting in the armchair. As he walked up to the victim, the victim began to stand up. Castillo pushed the victim in the chest at which time the victim was stabbed by the knife in Castillo's hands. Castillo stated that he thought that he had stabbed the victim a second time but he was not sure.

Castillo stated that he tossed that knife down and went to the upstairs bathroom where he washed his bloody hands off in the bathroom sink. He returned downstairs and armed himself with still another kitchen knife. He stated that he took this knife as he thought that the victim was still alive and he needed it for protection. He sat down on the living room couch and then passed out drunk. Castillo woke up at the sound of a voice. He jumped up and ran out of the front door of the residence, running north on Ridgwood Place, and then east on Elmwood Street. He ran home and took off his shirt throwing it under the porch at his father's apartment building. He admitted that the blue and black plaid shirt was in fact his and was the shirt he was wearing at the time of the murder.

Castillo stated that he was not sure if he killed the victim and contemplated calling the police while he was in the residence but decided against it. He stated that he did not take any property from the residence. He stated that he did not remember ransacking the location but that if he did it was not to steal anything, merely to locate the gun that the victim said he had. He said that he did not see a gun on the night of the murder, nor did he ever see any guns in the victim's possession at any time. He stated that he was sorry about what happened and did not intend to kill the victim."

In the current interview, when asking the inmate when he began getting into trouble, the inmate states that it was around 12 or 13 after his mother passed away. The inmate acknowledges being in youth authority, off and on, beginning around age of 12 or 13. The inmate acknowledges juvenile and adult criminal history. He had probation violations as a juvenile. The inmate had one probation violation as an adult.

When asking the inmate why he was getting into trouble as a young man, the inmate states that his father was in the service and gone a lot. When his father did come home, he was an alcoholic and abusive. The inmate states that after his mother's death, he got beat up very badly by his father and the children were put in foster care. From the age of 12 or 13, the other siblings were in foster care, but the inmate was on the street and/or in juvenile hall. The inmate states that, as a consequence of the father's beatings, he was afraid of adults.

The inmate was given the opportunity to read the Probation Officer's Report and his prior versions. The inmate states that he had no significant changes or additions to offer. When asking the inmate why he committed this crime, the inmate states that he was afraid of the victim. He said, "The victim was saying things that made me feel uncomfortable and he grabbed me." He added, "I got up and was going out to the kitchen, out the back door," but then he saw the knife. He came back into the room and "we struggled over the knife, and the knife got broken. I went and got another knife and pushed him down and stabbed him." When asking the inmate why he did not go out the door, he says, "I don't know." The inmate states that he did not realize that he stabbed the victim. The inmate states that he sat down and passed out at the victim's residence after the crime. The inmate states that they had consumed approximately two fifths of vodka between the two of them. The inmate states that he felt alcohol impaired his judgment, coupled with the fact that he had not eaten or sleeping.

When asking the inmate how he felt about the loss of life in this case, the inmate states that he feels terrible. He cannot change it. He said, "I've hurt a lot of people and I've committed a great sin." He said, "I have to deal with it everyday. It was a terrible thing I did to his family and my family. I have to live with it for the rest of my life. The victim's family has to live with it also. I can't change what I've done. I have to live with it."

When asking the inmate what has changed about him, so that something like this would not happen again anymore, he said, "I'm not afraid of people anymore." He said, "I've learned that I don't have to drink alcohol or do drugs to be someone. I don't have to hide my feelings anymore. My life has changed since I put God first in my life. I understand myself now and I try to do right."

MENTAL HEALTH CONCERNS OR PERSONALITY DISORDERS: The inmate has no serious mental health problems. The inmate would meet the diagnostic criteria for Polysubstance Dependence, in institutional remission and treatment. The inmate began drinking and using drugs around the age of 12 and that continued until he committed the controlling case. Alcohol was involved in the controlling case. The inmate would also meet the diagnostic criteria for Antisocial Personality Disorder, behaviorally and attitudinally subdued. The inmate started getting into trouble around the age of 12 or 13. He has multiple arrests as a juvenile and as an adult culminating in the controlling case.

V. DIAGNOSTIC IMPRESSION

Axis I:	304.80	Polysubstance Dependence, in institutional remission and treatment.
Axis II:	301.7	Antisocial Personality Disorder, attenuating with age and maturity.
Axis III:		None known / deferred
Axis IV:		Incarceration for life term
Axis V:		GAF: 90

VI. PREVIOUS EVALUATION SUMMARIES

A Psychological Evaluation for the Board of Prison Terms dated August 25, 2004, diagnoses the inmate with Polysubstance Abuse. He has been clean and sober for 15 years and was not seen as having a personality disorder. The author concludes that this inmate would be considered no higher risk for violence than any other citizen within the community, especially if he continues to use support services.

A Psychological Evaluation dated September 8, 2000 offered diagnostic impressions of Polysubstance Abuse, and Antisocial Personality Disorder, improved. The author concludes that in light of the above statements, if given the opportunity to function within an unstructured community, the inmate's violence potential increases slightly as compared to the average citizen in the community. A significant risk factor as a precursor to violence, for this inmate, would be his return to the use of alcohol or drugs as well as long standing history of violence and physical abuse.

A Psychological Evaluation dated May 27, 1997 offered no diagnostic impressions and no risk assessment.

VII. VIOLENCE RISK ASSESSMENT/CONCLUSIONS

The Board of Parole Hearings' questions will be addressed for each issue presented, as noted in an earlier section of this report.

1) The prisoner's violence potential in the free community;

The current research literature indicates that an empirically based approach to is the most reliable and valid method for assessing risk of future violence. In the present evaluation, two

separate assessment guides were used to help estimate this individual's risk for future violence in the community: the Psychopathy Check List – Revised (PCL-R) and the History – Clinical – Risk Management – 20 (HCR-20). The data for scoring these instruments were obtained from information derived in both the inmate interview and the files reviewed. These measures are widely used and are supported by years of research in the risk assessment field. They have been cross validated with various forensic populations, including United States males in correctional settings; however, the following results need to be regarded with some level of caution since some individuals may possess idiographic differences that could limit the applicability of these instruments. The evaluator has taken these factors into consideration in determining how much weight to allot each of the measures and in formulating an overall estimate of risk for future violence in the community. Estimates of risk for violence will be presented categorically: low, moderate, or high.

PCL-R: The PCL-R was scored for level of psychopathy based on data from inmate's records and information obtained in the current interview. The inmate's level of psychopathy is **low**. There was some elevation on this scale, due primarily to the inmate's prior arrests history.

HCR-20: The HCR-20 was scored for level of violence risk based on data from the inmate's records and information obtained in the current interview.

Historical: In rating this individual on the historical factors that predict future violence, the inmate would rate in the moderate range in his propensity for future violence. This rating is based on the inmate being involved in unstable relationships, not establishing a career, being a substance abuser, having early maladjustment problems and to a lesser extent, prior supervision failures, having antisocial personality diagnoses, along with one prior violent arrest.

Clinical/Insight: In rating the inmate on the clinical/insight factor, the inmate would rate in the low range in his propensity for future violence. The inmate has had a good response to treatment. He has developed insight into both his criminal past and his controlling offense. The inmate does not have a negative attitude. He has no active mental health symptoms and is not longer impulsive.

Risk Management: The inmate would also rate in the low range on his risk assessment. The inmate has handle compliance, stress and destabilizers well within the institutional setting. The inmate's parole plans seem feasible. However, there is an elevation on this variable, due to the inmate not having his parole plans completely developed and not having community resources all set up.

The inmate's overall risk assessment in the future for violence has now moved from the high end of the moderate range down to the **low** range on the clinical and risk management factors.

OVERALL RISK ASSESSMENT: The inmate's level of psychopathy is low. The inmate's overall risk assessment in the future for violence has now moved from the high end of the moderate range down to the low range on the clinical and risk management factors.

2). *The significance of alcohol/drugs as it relates to the commitment offense and an estimate of the prisoner's ability to refrain from the use/abuse of same when released;*

The inmate openly acknowledges his use of alcohol as a major factor in the committing offense. The inmate acknowledges that the night of the offense, he and the victim drank approximately two (2) fifths of vodka. The inmate realizes that the alcohol impaired his judgement. The inmate also realizes that he was scared and over reacted. This over reaction was due, in part, to his childhood of fear and abuse, and being fearful of adults. The inmate has been active in AA or NA for 12 to 13 years. The inmate has been clean and sober for about 18 years. He acknowledges that substance abuse has been a major life problem. He also understands the need for life-long treatment. It is recommended that he continue ongoing abuse treatment and relapse prevention be a condition of his parole plans.

Dr. R. Starrett

Richard Starrett, Ph.D., CA License # PSY-13628
 Contract Forensic Psychologist
 Board of Parole Hearings / Forensic Assessment Division
 California Department of Corrections and Rehabilitation

4-30-2007
 Date Submitted

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use, or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act and the Health Insurance Portability and Accountability Act (HIPAA). If you are not the intended recipient, please contact the sender and destroy all copies of this communication.

**PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
(REVISED AUGUST 1998)**

**PAROLE CONSIDERATION HEARING
SEPTEMBER 2004 LIFER CALENDAR**

CORRECTIONAL TRAINING FACILITY, SOLEDAD

Inmate Castillo has served approximately 16 years on a 16 year-to-life sentence for second-degree murder. This is an addendum report.

PSYCHOSOCIAL ASSESSMENT

I. IDENTIFYING INFORMATION:

Inmate Castillo is now a 39-year-old Filipino, single male. Religious affiliation is Christian.

II. DEVELOPMENT HISTORY:

Developmental history is essentially the same as reported in the last BPT performed by R. Coate, Ph.D. on 9/8/00.

III. EDUCATIONAL HISTORY:

The previous report of 9/8/00 in the education section discusses that the inmate states that "I just can't seem to pass the test, I have difficulty learning." The evaluator then concludes that school not only a struggle for him, but he also frequently made excuses to remain home with his ill mother. In this educational section it is also seen that the inmate was a Special Education student and as such, being in education for this length of time, this inmate long ago could have received a chrono stating that he has reached a plateau in his learning. However, inmate Castillo has persevered and continues to do so in order to complete his GED.

IV – VIII. Remain essentially unchanged. Please view the previous report of 9/00.

IX. SUBSTANCE ABUSE HISTORY:

As previously reported, inmate Castillo has had serious substance abuse problems since he was young and was also under the influence at the time of the commitment offense. Inmate Castillo has now been clean and sober for 15 years. He has completed numerous self-help groups, such as 10 years in NA and AA; in 1994 he completed a Life Skills group with Dr. Bakeman; he previously completed a 14-week impact group with Captain Guerra and also in 1986 completed a course of individual therapy with Dr. Terrini. His

CASTILLO, FRANCISCO
 CDC NUMBER: C-85768
 BPT PSYCHOLOGICAL EVALUATION
 PAGE 2

previous psych report of 9/00 states that he gained more of an understanding of his commitment offense and the circumstances which led up to it."

X. PSYCHOLOGICAL AND MEDICAL HISTORY:

This report uses the heading psychiatric and medical history. It should be psychological and medical history. It should state that inmate Castillo denies any history of medical or psychological hospitalizations. He denies any psychological history or suicide attempts. The inmate did complete a course of individual psychotherapy and the behest of the Board of Prison Terms in order to fully understand the underlying causes of his commitment offense. He appears to have met that goal.

XI. PLANS IF GRANTED RELEASE:

The inmate states that should he be given a release date by the Board of Prison Terms he would most likely live in a half-way house and where he would be released to the County of Los Angeles. He states for work that he is qualified to do any type of construction. He is also qualified as a warehouseman. He has most recently learned and completed Vocational Data and that would also be a possibility of employment for him. When asked how he believed he would do on parole, the inmate replied that he would do great.

CLINICAL ASSESSMENT

XII. CURRENT MENTAL STATUS/TREATMENT NEEDS:

Inmate Castillo appears his stated age of 39. He was appropriately dressed and groomed. He is cooperative, calm, alert; however, tentative and soft-spoken during the interview. His speech was articulate and clear and readily understandable. His flow of thought and affect were both within the normal range. There was no evidence of delusions or hallucinations. He was fully oriented and his intellectual functioning is estimated to be within the average range. There was evidence of a mood or thought disorder. His insight and judgment appear to be intact. He demonstrates good insight into his commitment offense and shows appropriate, significant remorse.

CURRENT DIAGNOSTIC IMPRESSIONS:

AXIS I: History of poly-substance abuses, clean and sober for 15 years.
 AXIS II: No personality disorder.
 AXIS III: No physical disorders.
 AXIS IV: Incarceration.
 AXIS V: GAF equals 90

CASTILLO, FRANCISCO
CDC NUMBER: C-85768
BPT PSYCHOLOGICAL EVALUATION
PAGE 3

Would the inmate be given a parole or release date at this time, his prognosis for maintaining his present gains within the community is positive providing he acquires positive support within the community such as NA and AA. He might also want to seek individual therapy within the community in order to assist reintegration into society.

XIII. REVIEW OF LIFE CRIME:

When asked about his criminal offense inmate Castillo stated that although it doesn't change anything about what he did, he states again he is very sorry for his actions. He hopes that he will at some point his life be able to receive forgiveness for his crime. The inmate stated he would like his victim's family to know how remorseful he is. Inmate Castillo understands that it is not what he says, or what he feels, but what does that shows people he is a changed person

The inmate states that he is comfortable saying that he is ready to set his past aside. When asked what that meant, the inmate recounted how he has come to understand the underlying causes for his commitment offense. These being partially mitigating circumstances in that he grew up in a horrifically abusive home, with an alcoholic father and the only person who cared for him and understood him (his mother) he watched her die of cancer at the age of 13. He was then abused so badly he and his six siblings were removed from the home, put into foster care where he ran away and basically grew up on the streets. The inmate has never had any kind of childhood, nor has he had the direction. He states that he has learned all of those things since he has been in prison and has reinvented not only a childhood, but also a life where 15-16 years later he states that he can now reenter society and he is confident that he can do well.

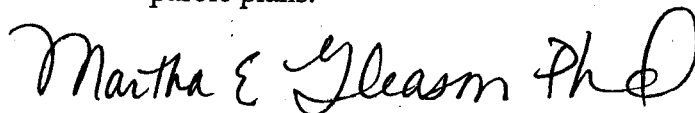
XIV. ASSESSMENT OF DANGEROUSNESS:

- A. The inmate's violence potential within a controlled setting is considered to be significantly below average relative to this level two population, based on several factors. On one hand the inmate did have a significant juvenile and young adult history and again factors within his environment may explain that juvenile criminal history. However, upon the time of incarceration for the present offense the inmate was able to soon after completely turn his life around and has managed to not get any disciplinary issues for his entire incarceration. Therefore, in light of base factors his violence potential is below average relative to his level two inmate population.
- B. Within a community, after 15-16 years of no disciplinary problems, this inmate would be considered no higher risk for violence than any other citizen within the community, especially if he continues to use supportive services.
- B. The most significant risk factor as a precursor to violence for this inmate would be his return to the use of alcohol and/or drugs.

CASTILLO, FRANCISCO
CDC NUMBER: C-85768
BPT PSYCHOLOGICAL EVALUATION
PAGE 4

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS:

- A. He is confident, responsible. He has the capacity to abide by institutional standards and has overwhelmingly done so during his incarceration period, as evidenced by his disciplinary free record.
- B. The inmate does not have a mental disorder which would necessitate treatment either during his incarceration or following parole.
- C. This inmate could strongly benefit from continued attendance at Alcoholics Anonymous and/or Narcotics Anonymous as well as mandatory testing as part of his parole plans.



Martha E. Gleason, Ph.D.
Staff Psychologist
Correctional Training Facility, Soledad



B. Zika, Ph.D.
Senior Supervising Psychologist
Correctional Training Facility, Soledad

MG/lrr

D: 08/25/04

T: 08/31/04

PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
PAROLE CONSIDERATION HEARING
2000 LIFER CALENDAR

CORRECTIONAL TRAINING FACILITY, SOLEDAD
AUGUST 29, 2000

This is the fourth psychological evaluation for the Board of Prison Terms on inmate Francisco Castillo. This report is the product of a personal clinical interview with the inmate conducted on 8/29/00, as well as a review of his Central file and Unit health record. This clinical review and review of pertinent documents with the express purpose of preparing this report.

I. IDENTIFYING INFORMATION:

Inmate Castillo is a 35 year old, single, Phillipino male who was born on 2/20/65. His reported religious affiliation is Christian. He has numerous tattoos on his chest and both forearms. He reports that common nicknames have been "junior" and "Cisco". He also denies any gang affiliation or activity.

II. DEVELOPMENTAL HISTORY:

Inmate Castillo reports that his childhood years were essentially normal with speech and motor development milestones achieved at appropriate ages. He reports a significant childhood history of physical abuse by his father, which frequently resulted in emergency room treatment. The last incident of abuse occurred when he was 13 and his father beat him, breaking his arm. The police were called and the children were removed from the home.

III. EDUCATIONAL HISTORY:

Educationally, inmate Castillo stated that he attended Public School and left in the middle of the Ninth Grade. Throughout his incarceration he has continued to work toward his G.E.D. However, he reports "I just can't seem to pass the test". He reports attending Special Education classes. However, he denies having any learning disability, but states "I just have difficulty learning". School has always been a struggle for him, since neither of his parents were available to encourage or support his continued learning. He denies being a disciplinary problem in school, however, as his mother became ill with cancer he frequently made excuses to remain at home to be with her. The inmate acknowledged the

CASTILLO, FRANCISCO
CDC NUMBER: C-85768
BPT PSYCHOLOGICAL EVALUATION
PAGE TWO

importance of obtaining his G.E.D. or obtaining his diploma and continued to pursue this endeavor through a self-learning program with books and materials.

IV. FAMILY HISTORY:

Inmate Castillo was raised by his mother and father in Michigan until the age of 13 when his mother died of cancer and the family moved to California to be closer to his paternal grandparents. He reported an extremely close relationship with his mother as "my life changed drastically when she died". His father was retired from the Coast Guard and was rarely at home. However, after the death of his mother, his father had difficulty handling the loss, as well as taking care of six young children.

Inmate Castillo is the second oldest of six and has been in and out of correctional facilities since he was a teenager. His home life was very conflictual and stressful, as his father drank heavily and abused both his mother as well as all the children. The inmate describes his teenaged years as "living in fear and not having anyone to confide in". After the death of his mother the physical abuse by his father escalated to the point of the children being taken out of the home by Social Services and placed in the care of their paternal grandmother. She subsequently could not handle the responsibility of six children and they were subsequently separated and placed in alternate foster homes. Inmate Castillo ran away from foster care and stayed with friends who were on the street.

He describes spending the majority of his adolescent years incarcerated for various crimes consisting of assault and batteries, and burglaries. As an adult, he also served one prior incarceration for burglary where he received a two year sentence. He does not maintain contact with his siblings and has not since they were separated as children, although he reports sending holiday cards, but rarely receives any response.

V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:

Inmate Castillo stated that he is a heterosexual male, he denied any history of sexual aggression or high-risk behavior.

CASTILLO, FRANCISCO
CDC NUMBER: C-85768
BPT PSYCHOLOGICAL EVALUATION
PAGE THREE

VI. MARITAL HISTORY:

Inmate Castillo does not have a marital history, nor does he have any children from any relationships.

VII. MILITARY HISTORY:

The inmate denied any military history.

VIII. EMPLOYMENT AND INCOME HISTORY:

Prior to his current incarceration inmate Castillo denied having any significant employment history. He worked at odd jobs around his neighborhood, however, he spent the majority of his years incarcerated. During his 12 years at CTF he has programmed well and has proven to be a steady and productive employee. He worked for 6 years as a Textile Mechanic and in 1997 he worked for Inmate Assignment as a clerk.

Currently, he works in the Culinary as a clerk and has been performing this function for the past 6 years. While providing clerical support he has taken the initiative to learn computer skills in hoping to improve his marketability when paroled. He has received exceptional and above average reports from supervisors, often stating "he is an exceptional worker", "needs very little supervision and gets along well with fellow workers", "this inmate is steady and cooperative and always tries to do his best".

IX. SUBSTANCE ABUSE HISTORY:

Inmate has acknowledged that he has a significant history of alcohol and drug abuse. He reported to have started drinking at an early age and progressed to sniffing glue, and then to harder drugs such as cocaine and heroin. The day of the committed offense he and a friend drank approximately a bottle and a half of Vodka. The inmate reported that his substance use was a daily occurrence, frequently blacking out and becoming quite intoxicated. His father was an untreated alcoholic and given the inmates significant history of abuse he described his addiction

CASTILLO, FRANCISCO
CDC NUMBER: C-85768
BPT PSYCHOLOGICAL EVALUATION
PAGE FOUR

as "I needed it to numb the pain". He described his childhood as being very angry and not having many outlets to talk about his pain. He has been attending Alcoholics Anonymous since 1994 and reports have indicated that he interacts well with other group members and has gained some insight into his own history and problems with drinking.

X. PSYCHIATRIC AND MEDICAL HISTORY:

Inmate Castillo denies any history of medical or psychiatric hospitalizations. He denies any psychiatric history or suicide attempts. In 1996, however, inmate Castillo completed a course of individual psychotherapy whereby he gained more of an understanding into his commitment offense and the circumstances which led up to it. He has also attended a Lifeskills Group in 1994 and he is also currently in the fourth week of a 14 week impact self-help group.

Despite his difficulties in his past, he has programmed well and adjusted positively to this incarceration. Inmate Castillo denies a history of any serious accidents or head injuries or a history of seizures or other neurological conditions. He is not taking any medication at this time.

XI. PLANS IF GRANTED RELEASE:

Inmate Castillo plans should he be given a parole date was somewhat vague. Although he has not had much communication with his family, he was insistent that they would be supportive of him upon his release and provide him with temporary housing, until he got on his feet. When questioned further about being more specific he stated that his brother and/or aunts and uncles would want him to stay with them. However, he "doesn't want to be a burden to anyone". Given the marketable skills he has learned while incarcerated he feels that he would adjust to societies challenges quite well when paroled.

CASTILLO, FRANCISCO
CDC NUMBER: C-85768
BPT PSYCHOLOGICAL EVALUATION
PAGE FIVE

CLINICAL ASSESSMENT

XII. CURRENT MENTAL STATUS / TREATMENT NEEDS:

Inmate Castillo appeared his stated age of 35, he was appropriately dressed and groomed. He was cooperative, calm and alert during the interview. His speech was articulate and clear, and readily understandable. His flow of thought and affect were both within the normal range and there was no evidence of delusions or hallucinations. He was fully oriented and his intellectual functioning was estimated to be within the average range. There was no evidence of a mood or thought disorder. His insight and judgment appeared to be intact. He demonstrated good insight into his commitment offense and showed significant remorse.

CURRENT DIAGNOSTIC IMPRESSIONS:

AXIS I: Polysubstance abuse, in institutional remission.
AXIS II: Antisocial personality disorder, improved.
AXIS III: No contributory physical disorder.
AXIS IV: Incarceration.
AXIS V: GAF equals 90.

Should this inmate be given a parole or release date at this time his prognosis for maintaining his present gains from the community will be positive providing that he has adequate support in the community to aid in his adjustment, given his length of incarceration.

XIII. REVIEW OF LIFE CRIME:

Inmate Castillo described at length the circumstances which led to the 1988 murder. He reports having an altercation with the victim and apparently stabbed him with a kitchen knife. He does not recall the incident very well and states that he was heavily intoxicated at the time and was also drinking excessively days prior to the incident. He takes full responsibility for the stabbing of the victim and feels that he is better able to deal with stress and is able to demonstrate more

CASTILLO, FRANCISCO
CDC NUMBER: C-85768
BPT PSYCHOLOGICAL EVALUATION
PAGE SIX

self-control than when he was younger. He insightfully noted that he was unduly influenced by the wrong people and made very bad decisions while growing up.

XIV. ASSESSMENT OF DANGEROUSNESS:

A. His violence potential within a controlled setting is considered to be below average, relative to this Level II inmate population. This conclusion is based upon several factors.

On the one hand, he has a juvenile criminal history beginning as an early teenager and spent the majority of his adolescent years incarcerated for crimes such as assault and battery, and burglary. Two, his current offense is one of brutality and callousness, having stabbed the victim multiple times and later ransacking his house. Three, he comes from a family of prior physical abuse and has learned this to be a way of handling anger and stress. Along with the abuse he also has a significant history of alcohol and drug use, which further heightens his risk for violence potential and impulse control problems.

However, on the other hand, in the 12 years of incarceration that the inmate has been disciplinary free from any CDC violations. He has programmed well and has attended self-improvement programs and has been trying to better his situation and prepare for his potential release. He has been faced with many challenges and disappointments while incarcerated and has handled them appropriately and all without noted incidents. Therefore, in light of these factors, his violence potential is considered to be below average relative to this Level II inmate population.

B. In light of the above stated facts, if given the opportunity to function within the unstructured community his violence potential increases slightly as compared to the average citizen in the community.

C. The most significant risk factor as a precursor to violence for this inmate would be his return to the use of alcohol and/or drugs as well as a long-standing history of violence and physical abuse.

CASTILLO, FRANCISCO
CDC NUMBER: C-85768
BPT PSYCHOLOGICAL EVALUATION
PAGE SIX

XV. CLINICIAN OBSERVATIONS / COMMENTS / RECOMMENDATIONS:

A. This inmate is competent and responsible for his behavior. He has the capacity to abide by institutional standards and has overwhelmingly done so during his incarceration period. Because of his disciplinary free record.

B. This inmate does not have a mental disorder which would necessitate treatment either during his incarceration or following parole.

C. This inmate could benefit from continued attendance at Alcoholics Anonymous and/or Narcotics Anonymous as part of his parole requirement.



R. S. COATE, Psy.D.
Senior Supervising Psychologist
Correctional Training Facility, Soledad

RSC/lrr

D: 08/29/00

T: 09/08/00

EXHIBIT "C"

**LIFE PRISONER EVALUATION REPORT
SUBSEQUENT PAROLE CONSIDERATION HEARING
MARCH 2007 CALENDAR**

CASTILLO

C85768

I. COMMITMENT FACTORS:

A. **Life Crime:** All relevant documents have been considered and all information remains the same.

1. **Summary of Crime:** All relevant documents have been considered and all information remains the same.

2. **Prisoner's Version:** All relevant documents have been considered and all information remains the same.

3. **Aggravating/Mitigating Circumstances:**

a. **Aggravating Factors:** All relevant documents have been considered and all information remains the same.

b. **Mitigating Factors:** All relevant documents have been considered and all information remains the same.

B. **Multiple Crime(s):** N/A.

1. **Summary of Crime:** N/A.

2. **Prisoner's Version:** N/A.

II. PRECONVICTION FACTORS:

A. **Juvenile Record:** All relevant documents have been considered and all information remains the same.

B. **Adult Convictions and Arrests:** All relevant documents have been considered and all information remains the same.

C. **Personal Factors:** All relevant documents have been considered and all information remains the same.

Sent to Inmate on 12/26/06

CASTILLO

C85768

CTF-SOLEDAD

MAR/2007

Inmate Copy

III. POSTCONVICTION FACTORS:

- A. **Special Programming/Accommodations:** N/A.
- B. **Custody History:** All relevant documents have been considered and all information remains the same. Castillo remained at CTF in the general population with Medium A Custody.
- C. **Therapy and Self-Help Activities:** Documents from previous hearings remain valid. Castillo has participated in AA/NA and attended an alternative to violence program. Refer to Postconviction Progress Report for details.
- D. **Disciplinary History:** Documents from previous hearings remain valid. Castillo continues to remain disciplinary free.
- E. **Other:** Castillo attended his Subsequent #2 Parole Consideration Hearing on 3/28/06. The hearing was postponed due to the need for a new psych evaluation as well as for Castillo to develop parole plans.

IV. FUTURE PLANS:

- A. **Residence:** All relevant documents have been considered and all information remains the same.
- B. **Employment:** All relevant documents have been considered and all information remains the same.
- C. **Assessment:** In review of Castillo's parole plans, this counselor does not foresee any problems provided support letters are submitted prior to his hearing.

V. USINS STATUS: N/A.**VI. SUMMARY:**


- A. Prior to release the prisoner could benefit from:
 - 1. Continuing to be disciplinary free.
 - 2. Participation in self-help and therapy programs.
 - 3. Upgrading vocationally and educationally.


LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
MARCH 2007 CALENDAR


3

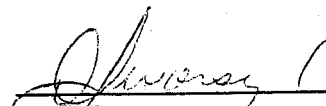
- B. This report is based upon a 2 hour review of Castillo's Central File and a (1) hour interview with Castillo.
- C. Per the Olson Decision, Castillo was afforded an opportunity to review his Central File. (Refer to CDC 128-B dated 11/30/06 in the General Chrono Section of the Central File.)
- D. No accommodation was required per the Armstrong vs. Davis BPH Parole Proceedings Remedial Plan (ARP) for effective communication.

• LIFE PRISONER EVALUATION REPORT
• PAROLE CONSIDERATION HEARING
• MARCH 2007 CALENDAR

 12/20/06
A. Corona Date
Correctional Counselor I

 CCII 12-20-06
D. Carnazzo Date
Correctional Counselor II

 FC 12-20-06
I. Guerra Date
Facility Captain

 12-22-06
D. S. Levorse Date
Classification and Parole Representative

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

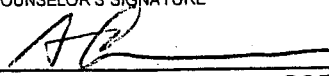
POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
2/10/06 to 11/30/06			<p>PLACEMENT: Remained at CTF in the general population.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: N/A.</p> <p>ACADEMICS: Castillo received his GED this period.</p> <p>WORK RECORD: Continued his unit clerk/aide assignment this period.</p> <p>GROUP ACTIVITIES: Castillo participated in AA/NA as verified by CDC 128B's dated 3/31/06, 4/10/06, 6/30/06, 7/13/06, and 9/30/06. He also attended an Alternative to Violence Project class on 9/19/06.</p> <p>PSYCH. TREATMENT: None noted during this period.</p> <p>PRISON BEHAVIOR: Castillo remained disciplinary free during this period.</p> <p>OTHER: None.</p>
CORRECTIONAL COUNSELOR'S SIGNATURE			DATE
			12/22/06
CASTILLO	C85768	CTF-SOLEDAD	MAR/2007

EXHIBIT "D"

CALIFORNIA BOARD OF PRISON TERMS

D E C I S I O N

PRESIDING COMMISSIONER GILLIS: We're back on record. And all those who were previously identified have returned. And Mr. Castillo, the panel has unanimously determined that you're not suitable for parole at this time and that you would pose an unreasonable risk of danger and a threat to public safety if released. We base the finding on the following:

The commitment offense was callous, cruel, dispassionate. The victim was stabbed multiple times. And these conclusions are drawn from the statement of facts wherein the prisoner after befriending the victim, went to his residence, stabbed him multiple times and either before or after the stabbing ransacked the victim's residence and property was taken. From the previous record, the prisoner has an escalating pattern of criminal conduct and it began at an early age. He had prior arrests as a juvenile, had a prior prison term, and in fact was on parole at the time of the life offense. He also had an unstable social history, which included drugs and alcohol abuse, and dropping out of school at an early age. Also society made multiple attempts to correct his criminality and none of those seemed to work. Under FRANCISCO CASTILLO, C-85768 DECISION PAGE 1 09/18/97

1 institutional behavior, the prisoner has programmed in
2 a limited manner. He's not developed a marketable
3 skill, not completed his GED, or upgraded
4 educationally. He has not had sufficient
5 participation in self-help and therapy programming.
6 The psychiatric factors, the report dated May 8, 1997,
7 by Dr. Terrini, does not totally supportive of
8 release. And Dr. Terrini states that the prisoner's
9 violence potential is no more than the average inmate.
10 Under remarks, the panel finds the prisoner needs
11 additional therapy in order to face, discuss,
12 understand, and cope with stress and to be able to
13 come to grips with the commitment offense. And until
14 progress is made, he continues to be a threat to
15 others. The prisoner has made some gains, but those
16 gains are recent, and we commend you for those gains.
17 We commend you for being disciplinary free since
18 coming into the institution. And that's quite
19 remarkable. Also you've been a good worker and gets
20 along well with staff, we commend you for that. But
21 these positive aspects do not outweigh the factors of
22 unsuitability. And we also find that it's not
23 reasonable to expect that parole would be granted
24 within the next three years, so it's a three year
25 denial. And the reason for that is the nature of the
26 commitment offense, wherein the prisoner stabbed the
27 FRANCISCO CASTILLO, C-85768 DECISION PAGE 2 09/18/97

1 victim multiple times and this is either during the
2 course of a burglary or a robbery and in any event the
3 victim was stabbed to death in a brutal and callous
4 manner. Also, the prisoner has a prior prison term.
5 He failed at society's attempts. He had been returned
6 three times for parole violations. And then he
7 committed the life offense. Also the psychiatric
8 report dated May the 8th 1997, by Dr. Terrini
9 indicates a need for a longer period of observation
10 and evaluation. During the next three years we want
11 you to remain disciplinary free and I don't think
12 that's going to be a problem for you. You've done
13 well in that area, but remain disciplinary free.
14 Mention was made here today of your ability to upgrade
15 educationally and since so you're able to do that, so
16 you ought to get your GED for your high school
17 diploma, if you're able to do that. Also, participate
18 in any self-help and therapy programming that might
19 become available to you. That's the formal reading of
20 the decision. I'll give you a copy of the tentative
21 decision. You're doing well. You're still not quite
22 coming clean with everything about the life offense,
23 but you made a good start. Commend you for that.
24 I'll see if any of the other panel members have any
25 comments. Mr. Baker?

26 COMMISSIONER BAKER: None. Thank you.

40

1 PRESIDING COMMISSIONER GILLIS: Mr. Ortega?

2 COMMISSIONER ORTEGA: (inaudible)

3 PRESIDING COMMISSIONER GILLIS: Okay. You're
4 doing well so keep it up. Good luck. We'll see you
5 in three years.

6 --o0o--

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 PAROLE DENIED THREE YEARS

26 EFFECTIVE DATE OF THIS DECISION

DEC 30 1997

27 FRANCISCO CASTILLO, C-85768 DECISION PAGE 4 09/18/97

EXHIBIT "D"

CALIFORNIA BOARD OF PRISON TERMS

D E C I S I O N

PRESIDING COMMISSIONER GILLIS: We're back on record. And all those who were previously identified have returned. And Mr. Castillo, the panel has unanimously determined that you're not suitable for parole at this time and that you would pose an unreasonable risk of danger and a threat to public safety if released. We base the finding on the following:

The commitment offense was callous, cruel, dispassionate. The victim was stabbed multiple times. And these conclusions are drawn from the statement of facts wherein the prisoner after befriending the victim, went to his residence, stabbed him multiple times and either before or after the stabbing ransacked the victim's residence and property was taken. From the previous record, the prisoner has an escalating pattern of criminal conduct and it began at an early age. He had prior arrests as a juvenile, had a prior prison term, and in fact was on parole at the time of the life offense. He also had an unstable social history, which included drugs and alcohol abuse, and dropping out of school at an early age. Also society made multiple attempts to correct his criminality and none of those seemed to work. Under

FRANCISCO CASTILLO, C-85768 DECISION PAGE 1 09/18/97

1 institutional behavior, the prisoner has programmed in
2 a limited manner. He's not developed a marketable
3 skill, not completed his GED, or upgraded
4 educationally. He has not had sufficient
5 participation in self-help and therapy programming.
6 The psychiatric factors, the report dated May 8, 1997,
7 by Dr. Terrini, does not totally supportive of
8 release. And Dr. Terrini states that the prisoner's
9 violence potential is no more than the average inmate.
10 Under remarks, the panel finds the prisoner needs
11 additional therapy in order to face, discuss,
12 understand, and cope with stress and to be able to
13 come to grips with the commitment offense. And until
14 progress is made, he continues to be a threat to
15 others. The prisoner has made some gains, but those
16 gains are recent, and we commend you for those gains.
17 We commend you for being disciplinary free since
18 coming into the institution. And that's quite
19 remarkable. Also you've been a good worker and gets
20 along well with staff, we commend you for that. But
21 these positive aspects do not outweigh the factors of
22 unsuitability. And we also find that it's not
23 reasonable to expect that parole would be granted
24 within the next three years, so it's a three year
25 denial. And the reason for that is the nature of the
26 commitment offense, wherein the prisoner stabbed the
27 FRANCISCO CASTILLO, C-85768 DECISION PAGE 2 09/18/97

1 victim multiple times and this is either during the
2 course of a burglary or a robbery and in any event the
3 victim was stabbed to death in a brutal and callous
4 manner. Also, the prisoner has a prior prison term.
5 He failed at society's attempts. He had been returned
6 three times for parole violations. And then he
7 committed the life offense. Also the psychiatric
8 report dated May the 8th 1997, by Dr. Terrini
9 indicates a need for a longer period of observation
10 and evaluation. During the next three years we want
11 you to remain disciplinary free and I don't think
12 that's going to be a problem for you. You've done
13 well in that area, but remain disciplinary free.
14 Mention was made here today of your ability to upgrade
15 educationally and since so you're able to do that, so
16 you ought to get your GED for your high school
17 diploma, if you're able to do that. Also, participate
18 in any self-help and therapy programming that might
19 become available to you. That's the formal reading of
20 the decision. I'll give you a copy of the tentative
21 decision. You're doing well. You're still not quite
22 coming clean with everything about the life offense,
23 but you made a good start. Commend you for that.
24 I'll see if any of the other panel members have any
25 comments. Mr. Baker?

26 COMMISSIONER BAKER: None. Thank you.

40

1 PRESIDING COMMISSIONER GILLIS: Mr. Ortega?

2 COMMISSIONER ORTEGA: (inaudible)

3 PRESIDING COMMISSIONER GILLIS: Okay. You're
4 doing well so keep it up. Good luck. We'll see you
5 in three years.

6 ---o0o---

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 PAROLE DENIED THREE YEARS

26 EFFECTIVE DATE OF THIS DECISION

DEC 30 1997

27 FRANCISCO CASTILLO, C-85768 DECISION PAGE 4 09/18/97

41

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, JUDY C. INGRAM, a duly designated transcriber, CAPITOL ELECTRONIC REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 40, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the INITIAL PAROLE CONSIDERATION HEARING OF FRANCISCO CASTILLO, CDC Number C-85768, on September 18, 1997, and that the foregoing pages constitutes a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-captioned matter and have no interest in the outcome of the hearing.

Dated October 18, 1997, at Sacramento,
California.



JUDY C. INGRAM
TRANSCRIBER

CALIFORNIA BOARD OF PRISON TERMS

D E C I S I O N

PRESIDING COMMISSIONER WELCH: Ready?

DEPUTY COMMISSIONER HARMON: You're on record.

PRESIDING COMMISSIONER WELCH: The Panel

reviewed all information received from the public and relied on the following circumstances in concluding that the prisoner is not suitable for parole and would pose an unreasonable risk of danger to society or a threat to the public safety if released from prison. The offense was carried out in an especially cruel and callous manner. The offense was carried out in a dispassionate manner. The victim was abused. The offense was carried out in a manner which demonstrates a callous -- exceptional callous disregard for human suffering. The motive for the crime was inexplicable or very trivial in relation to the offense. The conclusion was drawn from the Statement of Facts whereby Mrs. McCardy, that's M-C-C-A-R-D-Y, returned home to find her husband John McCardy sitting in the living room chair without a pulse. She observed another individual sitting on the couch. And as she went to all 911 that individual, who subsequently turned out to be the prisoner, exited their house. As investigation determined had been ransacked and that

FRANCISCO CASTILLO C-85768 DECISION PAGE 1 6/7/01

1 as best could be determined that the prisoner
2 stabbed and slashed the victim. The prisoner has
3 failed to gain from previous grants -- previous
4 grants of probation and cannot be -- and parole, and
5 cannot be counted upon to avoid criminality. He
6 failed to profit from society's previous attempts to
7 correct his criminality, such attempts included CYA
8 commitments, prior prison terms, parole, and on
9 probation. Unsuitable criminal history includes
10 taking a vehicle without owner's consent, hit and
11 run, under the influence of a controlled substance,
12 burglary, assault with a firearm, attempted grand
13 theft auto, and the instant offense, murder. The
14 prisoner has failed to develop a marketable skill
15 that can be put to use upon release. He's failed to
16 upgrade educationally and vocationally. He has not
17 sufficiently participated in self-help programs and
18 therapy programs. The hearing Panel notes that in
19 response to 3042 notices indicating opposition to a
20 finding of parole suitability, specifically the
21 Deputy District Attorney from Los Angeles County
22 voiced opposition to a finding of parole at this
23 time. The Panel makes the following findings -- The
24 Panel makes the following findings: The prisoner
25 needs therapy in order to face, discuss, understand
26 and cope with stress in a nondestructive manner.

48

1 Until progress is made the prisoner continues to be
2 unpredictable and threat to others. Nevertheless,
3 the prisoner should be commended for being
4 disciplinary-free during his incarceration. He
5 should also be commended for his participation in AA
6 and this prisoner has received excellent work
7 reports, and you are to be commended for that, sir.
8 However, these positive aspects of your behavior
9 does not outweigh the factors of unsuitability at
10 this time. Your parole is denied for three years.
11 In a separate decision the hearing Panel finds that
12 the prisoner has been convicted of murder and it is
13 not reasonable to expect that parole would be
14 granted during the next three years. The prisoner
15 committed the offense in an especially cruel manner,
16 specifically he slashed the victim, John McCurdy,
17 that's M-C-C-U-R-D-Y, and stabbed him and these
18 injuries resulted in his death. The prisoner has a
19 history of unstable and tumultuous relationships
20 with others, mainly with his father. He had an
21 unstable family history with his father and family.
22 The prisoner has not completed necessary
23 programming, which is essential to his adjustment
24 and needs additional time to gain such programming.
25 He has not fully and completely participated in
26 necessary self-help programs at this time. And he
27 FRANCISCO CASTILLO C-85768 DECISION PAGE 3 6/7/01

1 has not upgraded educationally or vocationally at
2 this time. The Panel recommends that you remain
3 disciplinary-free. You're doing an excellent job in
4 that area. The Panel also recommends that you
5 upgrade vocationally and educationally. We
6 understand that you are enrolled in a database
7 program at this time. However, you need to complete
8 that and you need to get a GED. It's essential that
9 you complete your high school education at least to
10 the level of receiving a GED. A GED is essential.
11 And you need to continue participating in any other
12 self-help program that you can. As I looked in the
13 file lifeskills seemed like a reasonable kind of
14 program for you to get involved in, teach you
15 lifeskills and self-esteem, preparing yourself for
16 parole and those kind of things. If there is
17 another class available I recommend strongly that
18 you get into that and you fully understand the
19 meaning of what the course is all about. I am also
20 going to recommend that you be evaluated (inaudible)
21 program. And that's something that I think you
22 would benefit from. We're going to put it in the
23 recommendations. It's up to CDC and the medical
24 staff at CMC will see whether or not you are placed
25 in there. But our reason for that is to deal with
26 and I'm not making a diagnosis, but maybe stress or
27 FRANCISCO CASTILLO C-85768 DECISION PAGE 4 6/7/01

50

1 whatever it is that you need to deal with. And I
2 can't define that now because I don't deem myself
3 qualified to do that. But I would like to see you
4 receive some type of therapy. And with that I --
5 that concludes the decision part of the hearing.
6 And I'll go to Commissioner Lawin, do you have any
7 comments?

8 **COMMISSIONER LAWIN:** Yes. Our recommendation is
9 we won't determine what level you're placed in, but
10 our recommendation is that CDC provide you with some
11 one on one therapy so that you can deal with the
12 ghosts of your past and you can work on those things
13 that seem to be troubling you that seem to haunt
14 you. At least that's the way it seems to come
15 across in your hearing. And one of the reasons we
16 denied you for three years is because we think you
17 have a lot of work to do, not only in vocation and
18 education, but also in maybe the psychological
19 factors as well. We wish you good luck.

20 **INMATE CASTILLO:** Thank you.

21 **PRESIDING COMMISSIONER WELCH:** Commissioner
22 Harmon?

23 **DEPUTY COMMISSIONER HARMON:** Just to wish you
24 luck, sir. Good luck.

25 **PRESIDING COMMISSIONER WELCH:** It's
26 approximately 1650 -- 1550. That concludes the

27 **FRANCISCO CASTILLO C-85768 DECISION PAGE 5 6/7/01**

51

1 hearing.

2 INMATE CASTILLO: Thank you.

3 --o0o--

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 PAROLE DENIED THREE YEARS

26 EFFECTIVE DATE OF DECISION _____

27 FRANCISCO CASTILLO C-85768 DECISION PAGE 6 6/7/01

52

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, CONNIE MASTIN, a duly designated transcriber, CAPITOL ELECTRONIC REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 through 51, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, at SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of FRANCISCO CASTILLO, CDC No. C-85768, on JUNE 7, 2001, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability.

I hereby certify that I am a disinterested party in the above-captioned matter and have no interest in the outcome of the hearing.

Dated JUNE 23, 2001, at Sacramento County, California.



Connie Mastin
Transcriber
CAPITOL ELECTRONIC REPORTING

EXHIBIT "E"

EXHIBIT "F"

TC
8-30

**LIFE PRISONER EVALUATION REPORT
SUBSEQUENT PAROLE CONSIDERATION HEARING
JUNE 2004 CALENDAR**

CASTILLO

C85768

I. COMMITMENT FACTORS:

A. **Life Crime:** Los Angeles County, Case Number A965649, Murder 2nd Degree, PC 187. Victim: John McCarty, age 45 at time of death. Weapon used: Long blade knife. Subject was received into CDC on 7/15/88. Sentence: 15 to Life plus 1 year under 12022. MEPD: 10/30/98.

1. **Summary of Crime:** On 2/24/88, at approximately 1945 hours, the victim's wife, Linda McCarty, returned to her home at 375 North Ridgewood Place in Hollywood. When she entered the den of the house, she discovered the body of her deceased husband, victim John McCarty, seated in a chair in the living room. As she checked the victim's pulse, she saw a male seated on the couch in the living room near the victim. Thinking that this person was also deceased she went to the den where she picked up a phone and called 911. While on the phone she heard footsteps in the living room and then observed the male who had been seated on the couch walking out the front door of the residence. The suspect fled on foot. There was extensive ransacking to the upstairs and downstairs areas of the house. Noted missing in the days following the murder was one hundred dollars in currency taken from the victim and one wristwatch valued at \$75.00. After investigation, the detectives utilized the department's computer system to identify a friend of the victim. Based on the possible name, physical description, tattoo, and possible birthdate of 2/20/65. Detectives located the CI&I arrest record for Francisco Parnala Castillo Jr., who has a birthdate of 2/20/65. Fingerprints taken from the Subject tentatively matched prints lifted from a cigarette case that was in the victim's residence. The tread pattern on the Subject's tennis shoes matched the pattern of a bloody shoe print on the victim's floor. Page six (6) picture photo display containing a photo of the Subject was shown to the victim's wife who identified the Subject's photo as being of the same person she had seen at the door on 2/2/88. A family housekeeper also positively identified the photo of the subject as being a person who had visited the victim on 2/19/88.

INMATE COPY

Detectives searched the area outside the subject's father's apartment and recovered a blue and black long sleeved shirt from underneath the stairwell. The Subject's father said that the Subject had slept in that area on the eve of the murder. Both the tennis shoes and the shirt tested positive for the presence of blood. Prior to being interviewed by detectives on 3/3/88 the Subject was advised of his rights and he waived them. The interview was tape recorded and after being confronted with his contradictory statements the Subject admitted to stabbing the victim. He said that he and the victim had been drinking vodka for quite a while and that he and the Subject were drunk. (P.O.R. pages 3-6).

2. **Prisoner's Version:** Upon interviewing Inmate Castillo, this writer is bringing the prisoner's statement forward from when he was in the Los Angeles County Jail. It should be noted that the Subject was in the L.A. County Jail for a Parolee at Large/Absconding and for Homicide. When Mr. Castillo was interviewed by the LAPD homicide detectives, Subject admitted the following. Castillo waived his rights and initially stated that he had been over to the victim's residence on two occasions. Castillo stated that he did not know that the victim was dead and he did not own the blue and black plaid shirt. After confronting the suspect with the contradictory statements, he admitted that he had been over to the victim's residence on more that two occasions. He then admitted that he had stabbed the victim. He stated that on Wednesday, 2-24-88, at approximately 3 o'clock he was standing on the corner of Beverly Boulevard and San Andrew's place in Hollywood with his brother Mario, his neighbor Barney Leigh, and a friend of Barney's when he observed the victim in the liquor store parking lot at the Northeast corner of Beverly Boulevard and San Andrew's Place. He stated that he went over to the victim and they talked. He said that the victim had just purchased a pint of Vodka and appeared intoxicated. he and the victim walked to the victim's home. The victim had his bicycle with him and walked it along with them.

Upon arriving at the victim's home they went inside via the front door, which the victim unlocked using his key, and sat down in the living room. He stated that they drank vodka for quite a while. He was now drunk. He said that the victim began telling him that he had a gun and was a good shot. He said that the victim stood up, approached him and grabbed him by the back of his neck. He said that he pushed the victim back causing him to fall into the living room armchair. He then went into the kitchen arming himself with a small kitchen knife. He returned to the living room, approached the victim and they struggled over the small knife. The victim was able to grab the blade and break it. The suspect stated that he tossed the knife away and went back into the kitchen, arming himself with a

much larger knife. He again approached the victim, who was sitting in the arm chair. As he walked up to the victim, the victim began to stand up. Castillo pushed the victim in the chest at which time the victim was stabbed by the knife in Castillo's hands. Castillo stated that he thought that he had stabbed the victim a second time but he was not sure.

Castillo stated that he tossed that knife down and went to the upstairs bathroom where he washed his bloody hands off in the bathroom sink. He returned downstairs and armed himself with still another kitchen knife. He stated that he took this knife as he thought that the victim was still alive and he needed it for protection. He sat down on the living room couch and then passed out drunk. Castillo woke up at the sound of a voice. He jumped up and ran out the front door of the residence, running north on Ridgewood Place, and then east on Elmwood Street. He ran home and took off his shirt throwing it under the porch at his father's apartment building. He admitted that the blue and black plaid shirt was in fact his and was the shirt he was wearing at the time of the murder.

Castillo stated that he was not sure if he killed the victim and contemplated calling the police while he was in the residence but decided against it. He stated that he did not take any property from the residence. He stated that he did not remember ransacking the location but that if he did it was not to steal anything, merely to locate the gun that the victim said he had. He said that he did not see a gun on the night of the murder, nor did he ever see any guns in the victim's possession at any time. He stated that he was sorry about what had happened and did not intend to kill the victim.

3. Aggravating/Mitigating Circumstances:

a. Aggravating Factors:

1. The inmate had an opportunity to cease but continued with the crime.
2. Subject has a criminal history.
3. Subject was on parole at the time of the offense.

b. Mitigating Factors: Crime was committed under partially excusable circumstances. Subject was under the influence of alcohol.

B. Multiple Crime(s): None.

II. PRECONVICTION FACTORS:

- A. **Juvenile Record:** In 1982 Castillo was involved in a Hit and Run Accident and a petition was requested. Subject stated that he requested a Public Defender and that he wanted to be tried as an adult. The court agreed. Subject was given 90 days in County Jail.
- B. **Adult Convictions:** Arrested on 10/21/83 for Under the Influence, 30 day County Jail. On 1/9/84 subject was arrested for Burglary, was found guilty, sentenced stated prison and was paroled on 2/26/85. He has had three parole violations.
- C. **Personal Factors:** Subject had completed a term for Burglary and had 3 Return to Custody parole violations prior to the instant offense. Subject was pretty much out on his own and had no sense of direction in his life. He was living with his father but his father was stressing that he become a responsible individual, secure employment, and to begin to live on his own and subsequently, subject was unable to do that for any extended period of time.

III. POSTCONVICTION FACTORS:

- A. **Special Programming/Accommodations:** None.
- B. **Custody History:** Castillo has remained at CTF since his arrival on 10-14-88. He has maintained Medium A Custody since 11/93 and has had "0" behavior points since 1993. He has also maintained consistent assignments.
- C. **Therapy and Self-Help Activities:** He has completed Impact Program and maintained regular AA/NA group attendance.
- D. **Disciplinary History:** He has had only two CDC 128A's in 1985 as his entire disciplinary history this incarceration.
- E. **Other:** Castillo attended a Subsequent #1 BPT hearing on 6-7-01 wherein the Board denied parole for three years and recommended to remain disciplinary free, upgrade vocation/education and participate in self help.

IV. FUTURE PLANS:

- A. **Residence:** Castillo is in the process of finding residence. He has contacted several half way type possibilities but no confirmation yet. Family possibilities are not plentiful at this time.

- B. **Employment:** He will seek work in the construction shipping/receiving fields for which he has prior experience. He can also seek opportunities in his institutional trade.
- C. **Assessment:** Castillo seems to be a very mature individual and very focused on success. Hopefully he will secure a viable residence prior to parole. He has always been able to maintain a job so that won't be a problem once he is in one.

V. **USINS STATUS:**

VI. **SUMMARY:**

- A. Castillo is in his sixteenth year of a fifteen year to Life plus one year term. While incarcerated he has programmed exceptionally well and has applied his efforts towards continued development. He has completed the Vocational Data Processing Program and gained considerable knowledge in the textiles operations. In realizing alcohol played an integral role in his prior behavior, he has consistently attended AA sessions to understand and overcome the associated pitfalls. He works extremely well with staff and peers and relates in a mature and responsible manner. Castillo makes no excuses for what transpired that fateful day and has accepted full responsibility for his actions. He displays genuine and undeniable remorse for the life altering effects this crime has had on the victim's family and his own family. In looking at Castillo's prior record, one would not get the impression that the end result would be a crime of this magnitude. He has not been in any trouble during his incarceration. I believe he has matured greatly over the years and could succeed upon release. He just still needs to arrange a residence. He is attempting to solidify family relations. Castillo maintains he did not intend to kill the victim. He will forever carry a cloak of guilt within his soul for this crime and his self induced sentence will far outlast the judicially imposed term. His sorrow is genuine and he realizes he must pay a price. He is hopeful that his debt can one day soon be considered paid and be allowed to resume a life in mainstream society. He is currently working on obtaining his GED and contacting sources for living arrangements. With a residence, his vocational trade knowledge and his previous construction, shipping and receiving experience, I firmly believe Castillo will succeed in his endeavors towards re-entering society as a productive and trouble free member.
- B. Prior to release the prisoner could benefit from: remaining disciplinary free and continuing some form of self help.

LIFE PRISONER EVALUATION REPORT

PAROLE CONSIDERATION HEARING
JUNE 2004 CALENDAR

- C. This report is based upon a one hour interview and a three hour complete review of the Central File.
- D. Castillo was afforded the opportunity to examine his Central File on 3-24-04 per CDC 128B dated 3-24-04 reflecting that he reviewed his file.
- E. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.

EXHIBIT "F"

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

(ENDORSED)
FILED
AUG 30 2007
KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of California, County of Santa Clara
BRET MORROW DEPUTY

In re

DONALD RAY LEWIS,

On Habeas Corpus

No.: 68038

ORDER

INTRODUCTION

Petitioner alleges that he has been denied due process of law because the Board has used standards and criteria which are unconstitutionally vague in order to find him unsuitable for parole. Alternatively, he argues that those standards, even if constitutionally sound, are nonetheless being applied in an arbitrary and meaningless fashion by the Board. He relies upon evidence that in one hundred percent of 2690 randomly chosen cases, the Board found the commitment offense to be "especially heinous, atrocious or cruel", a factor tending to show unsuitability under Title 15 §2402(c)(1).

Are the Board Criteria Unconstitutionally Vague?

Our courts have long recognized that both state and federal due process requirements dictate that the Board must apply detailed standards when evaluating whether an individual inmate is unsuitable for parole on public safety grounds. (See *In re Dannenberg* (2005) 34

1 Cal.4th 1061 at p. 1096, footnote 16.) Those standards are found in
2 15 CCR §2402(c) (Dannenberg, *supra*, 34 Cal.4th at p. 1080,) and do
3 include detailed criteria to be applied by the Board when considering
4 the commitment offense:

5 (c) Circumstances Tending to Show Unsuitability. The following
6 circumstances each tend to indicate unsuitability for release.
7 These circumstances are set forth as general guidelines; the
8 importance attached to any circumstance or combination of
9 circumstances in a particular case is left to the judgment of
10 the panel. Circumstances tending to indicate unsuitability
11 include:

12 (1) Commitment Offense. The prisoner committed the offense in an
13 especially heinous, atrocious or cruel manner. The factors to be
14 considered include:

15 (A) Multiple victims were attacked, injured or killed in
16 the same or separate incidents.

17 (B) The offense was carried out in a dispassionate and
18 calculated manner, such as an execution-style murder.

19 (C) The victim was abused, defiled or mutilated during or
20 after the offense.

21 (D) The offense was carried out in a manner which
22 demonstrates an exceptionally callous disregard for human
23 suffering.

24 (E) The motive for the crime is inexplicable or very
25 trivial in relation to the offense.

26 In response to Petitioners claim that the regulations are
27 impermissibly vague, Respondent argues that while "especially
28 heinous, atrocious or cruel" might be vague in the abstract it is
limited by factors (A)-(E) of §2402(c)(1), and thus provides a
'principled basis' for distinguishing between those cases which are
contemplated in that section and those which are not. An examination
of cases involving vagueness challenges to death penalty statutes is
instructive here and shows that Respondent's position has merit:

"Our precedents make clear that a State's capital sentencing

1 scheme also must genuinely narrow the class of persons eligible
 2 for the death penalty. When the purpose of a statutory
 3 aggravating circumstance is to enable the sentencer to
 4 distinguish those who deserve capital punishment from those who
 5 do not, the circumstance must provide a principled basis for
 6 doing so. If the sentencer fairly could conclude that an
 7 aggravating circumstance applies to every defendant eligible for
 8 the death penalty, the circumstance is constitutionally infirm."
 9 (Arave v. Creech (1993) 507 U.S. 463, 474, citing Maynard v.
 10 Cartwright (1988) 486 U.S. 356, 364: "invalidating aggravating
 11 circumstance that 'an ordinary person could honestly believe'
 12 described every murder," and, Godfrey v. Georgia (1980) 446 U.S.
 13 420, 428-429: "A person of ordinary sensibility could fairly
 14 characterize almost every murder as 'outrageously or wantonly
 15 vile, horrible and inhuman.'")

16 It cannot fairly be said that 'every murder' could be
 17 categorized as "especially heinous, atrocious or cruel" under the
 18 Board regulations, since the defining factors contained in
 19 subdivisions (A)-(E) clearly narrow the group of cases to which it
 20 applies. Although Petitioner also argues that the "vague statutory
 21 language is not rendered more precise by defining it in terms or
 22 synonyms of equal or greater uncertainty" (People v. Superior Court
 23 (Engert) (1982) 31 Cal.3d 797, 803, Pryor v. Municipal Court (1979)
 24 25 Cal.3d 238, 249. See also Walton v. Arizona (1990) 497 U.S. 639,
 25 654), the factors in those subdivisions are not themselves vague or
 26 uncertain. The mere fact that there may be some subjective component
 27 (such as "exceptionally callous" disregard for human suffering) does
 28 not render that factor unconstitutionally vague. The proper degree
 of definition of such factors is not susceptible of mathematical
 precision, but will be constitutionally sufficient if it gives
 meaningful guidance to the Board.

A law is void for vagueness if it "fails to provide adequate
 notice to those who must observe its strictures and
 impermissibly delegates basic policy matters to policemen,
 judges, and juries for resolution on an ad hoc and subjective
 basis, with the attendant dangers of arbitrary and

discriminatory application." (*People v. Rubalcava* (2000) 23 Cal.4th 322, 332, quoting *People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4th 1090, 1116, quoting *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-109.)

A review of cases expressing approval of definitions to limit the application of otherwise vague terms in death penalty statutes leads inextricably to the conclusion that the limiting factors in §2402(c) easily pass constitutional muster. An Arizona statute was upheld that provided a crime is committed in an 'especially cruel manner' when the perpetrator inflicts mental anguish or physical abuse before the victim's death," and that "mental anguish includes a victim's uncertainty as to his ultimate fate." (*Walton v. Arizona* (1990) 497 U.S. 639, 654.) Similarly, the court in *Maynard v. Cartwright*, 486 U.S. at 364-365, approved a definition that would limit Oklahoma's "especially heinous, atrocious, or cruel" aggravating circumstance to murders involving "some kind of torture or physical abuse. In Florida, the statute authorizing the death penalty if the crime is "especially heinous, atrocious, or cruel," satisfied due process concerns where it was further defined as "the conscienceless or pitiless crime which is unnecessarily torturous to the victim." *State v. Dixon* (1973) 283 So. 2d 1 at p. 9.

Here, the factors in subdivisions (A)-(E) provide equally clear limiting construction to the term "especially heinous, atrocious, or cruel" in §2402(c).

Has the Board Engaged in a Pattern of Arbitrary Application of the Criteria?

As previously noted, 15 CCR §2402 provides detailed criteria for determining whether a crime is "exceptionally heinous, atrocious or cruel" such that it tends to indicate unsuitability for parole. Our

1 courts have held that to fit within those criteria and thus serve as
2 a basis for a finding of unsuitability, the circumstances of the
3 crime must be more aggravated or violent than the minimum necessary
4 to sustain a conviction for that offense. (*In re Rosenkrantz* (2002)
5 29 Cal.4th 616, 682-683.) Where that is the case, the nature of the
6 prisoner's offense, alone, can constitute a sufficient basis for
7 denying parole. (*In re Dannenberg*, *supra*, 34 Cal.4th at p. 1095.)

8 Petitioner claims that those criteria, even if constitutionally
9 sound, have been applied by the Board in an arbitrary and capricious
10 manner rendering them devoid of any meaning whatever. The role of
11 the reviewing court under these circumstances has been addressed
12 previously in the specific context of Parole Board actions:

13 "[Courts have] an obligation, however, to look beyond the facial
14 validity of a statute that is subject to possible
15 unconstitutional administration since a law though fair on its
16 face and impartial in appearance may be open to serious abuses
17 in administration and courts may be imposed upon if the
18 substantial rights of the persons charged are not adequately
19 safeguarded at every stage of the proceedings. We have
20 recognized that this court's obligation to oversee the execution
21 of the penal laws of California extends not only to judicial
22 proceedings, but also to the administration of the Indeterminate
23 Sentence Law." (*In re Rodriguez* (1975) 14 Cal.3d 639, 648,
24 quoting *Minnesota v. Probate Court* (1940) 309 U.S. 270, 277.)

25 Similarly, in *In re Minnis* (1972) 7 Cal.3d 639, 645, the case
26 closest on point to the present situation, the California Supreme
27 Court stated: "This court has traditionally accepted its
28 responsibility to prevent an authority vested with discretion from
implementing a policy which would defeat the legislative motive for
enacting a system of laws." Where, as here, the question is whether
determinations are being made in a manner that is arbitrary and
capricious, judicial oversight "must be extensive enough to protect

1 limited right of parole applicants 'to be free from an arbitrary'
 2 parole decision... and to something more than mere pro-forma
 3 consideration.'" (*In re Ramirez* (2001) 94 Cal.App.4th 549 at p. 564,
 4 quoting *In re Sturm* (1974) 11 Cal.3d 258 at p. 268.)

5 This Court, therefore, now examines Petitioner's "as applied"
 6 void for vagueness challenge.

7 8 The Evidence Presented

9 A similar claim to those raised here, involving allegations of
 10 abuse of discretion by the Board in making parole decisions, was
 11 presented to the Court of Appeal in *In re Ramirez, supra*. The court
 12 there observed that such a "serious claim of abuse of discretion"
 13 must be "adequately supported with evidence" which should be
 14 "comprehensive." (*Ramirez, supra*, 94 Cal.App.4th at p. 564, fn. 5.)
 15 The claim was rejected in that case because there was not "a
 16 sufficient record to evaluate." (*Ibid.*) In these cases, however,
 17 there is comprehensive evidence offered in support of Petitioner's
 18 claims.

19 Discovery orders were issued in five different cases involving
 20 life term inmates (Petitioners) who all presented identical claims.¹

21
 22 ¹ This Court takes judicial notice of the several other cases currently
 23 pending (Criscione #71614, Jameison #71194, Bragg #108543, Ngo #127611.)
 24 which raise this same issue and in which proof was presented on this same
 25 point. (Evidence Code § 452(d). See specifically, in the habeas corpus
 26 context, *In re Vargus* (2000) 83 Cal.App.4th 1125, 1134-1136, 1143, in which
 27 the court noted: "Facts from other cases may assist petitioner in
 28 establishing a pattern." See generally *McKell v. Washington Mutual, Inc.*
 (2006) 142 Cal.App.4th 1457, 1491: "trial and appellate courts ... may
 properly take judicial notice of ... established facts from both the same
 case and other cases." And see *AB Group v. Wertin* (1997) 59 Cal.App.4th
 1022, 1036: Judicial notice taken of other cases when matters are "just as
 relevant to the present [case] as they are to the others.")

1 The purpose of the discovery was to bring before the Court a
2 comprehensive compilation and examination of Board decisions in a
3 statistically significant number of cases. The Board decisions under
4 examination consisted of final decisions of the Board for life-term
5 inmates convicted of first or second degree murder and presently
6 eligible for parole. Included were all such decisions issued in
7 certain months, chosen by virtue of their proximity in time to the
8 parole denials challenged in the pending petitions. All Board
9 decisions in the months of August, September and October of 2002,
10 July, August, September, October, November, and December of 2003,
11 January and February of 2004, February of 2005, and January of 2006
12 were compiled. This resulted in a review of 2690 cases decided in a
13 total of 13 months.

14 The purpose of the review was to determine how many inmates had
15 actually been denied parole based in whole or in part on the Board's
16 finding that their commitment offense fits the criteria set forth in
17 Title 15 §2402(c)(1) as "especially heinous, atrocious or cruel." A
18 member of the research team conducting the review, Karen Rega,
19 testified that in its decisions the Board does not actually cite CCR
20 rule §2402(c), but consistently uses the specific words or phrases
21 ("verbiage from code") contained therein, so that it could easily be
22 determined when that criteria was being applied. (For example,
23 finding "multiple victims" invokes §2402(c)(1)(A); finding the crime
24 "dispassionate" "calculated" or "execution style" invokes
25 §2402(c)(1)(B); that a victim was "abused" "mutilated" or "defiled"
26 invokes §2402(c)(1)(C); a crime that is "exceptionally callous" or
27 demonstrated a "disregard for human suffering" fits criteria

1 evidence" was noted as possibly being dispositive. And see *People v.*
2 *Flores* (2006) 144 Cal.App.4th 625 in which a statistical survey and
3 analysis, combined into an "actuarial instrument" was substantial
4 proof.)

5 A statistical compilation and examination such as has been
6 presented in these cases is entirely appropriate and sufficient
7 evidence from which to draw sound conclusions about the Board's
8 overall methods and practices.

9
10 THE EXPERT'S TESTIMONY

11 Petitioners provided expert testimony from Professor Mohammad
12 Kafai regarding the statistics and the conclusions that necessarily
13 follow from them. Professor Kafai is the director of the statistics
14 program at San Francisco State University, he personally teaches
15 statistics and probabilities, and it was undisputed that he was
16 qualified to give the expert testimony that he did. No evidence was
17 presented that conflicts or contradicts the testimony and conclusions
18 of Professor Kafai. By stipulation of the parties, Professor Kafai's
19 testimony was to be admissible and considered in the cases of all
20 five petitioners. (See page 35 of the June 1, 2007, evidentiary
21 hearing transcript.)

22 Professor Kafai testified that the samples in each case, which
23 consisted of two or three months of Board decisions, are
24 statistically sufficient to draw conclusions about the entire
25 population of life term inmates currently facing parole eligibility
26 hearings. Given that every inmate within the statistically
27 significant samples had his or her crime labeled "particularly
28

1 egregious' " or "especially heinous, atrocious or cruel" under Title
2 15 §2402(c)(1), it can be mathematically concluded that the same
3 finding has been made for every inmate in the entire population of
4 9,750. Although he testified that statisticians never like to state
5 unequivocally that something is proven to a 100% certainty, (because
6 unforeseen anomalies are always theoretically possible,) he did
7 indicate the evidence he had thus far examined came as close to that
8 conclusion as could be allowed. Not surprisingly, Professor Kafai
9 also testified that "more than 50% can't by definition constitute an
10 exception."

11 Having found the data provided to the expert to be sound this
12 Court also finds the expert's conclusions to be sound. In each of
13 the five cases before the Court over 400 inmates were randomly chosen
14 for examination. That number was statistically significant and was
15 enough for the expert to draw conclusions about the entire population
16 of 9,750 parole eligible inmates. The fact that the approximately
17 2000 inmates examined in the other cases also had their parole denied
18 based entirely or in part on the crime itself (§2402(c)(1)), both
19 corroborates and validates the expert's conclusion in each individual
20 case and also provides an overwhelming and irrefutable sample size
21 from which even a non expert can confidently draw conclusions.

22 DISCUSSION

23 Although the evidence establishes that the Board frequently says
24 parole is denied "first," "foremost," "primarily," or "mainly,"
25 because of the commitment offense, this statement of primacy or
26 weight is not relevant to the question now before the Court.
27

28

Petitioners acknowledge that the Board generally also cites other reasons for its decision. The question before this Court, however, is not whether the commitment offense is the primary or sole reason why parole is denied -- the question is whether the commitment offense is labeled "'particularly egregious'" and thus could be used, under *Dannenberg*, primarily or exclusively to deny parole.

The evidence proves that in a relevant and statistically significant period where the Board has considered life term offenses in the context of a parole suitability determination, every such offense has been found to be "particularly egregious" or "especially heinous, atrocious or cruel."² This evidence conclusively demonstrates that the Board completely disregards the detailed standards and criteria of §2402(c). "Especially" means particularly, or "to a distinctly greater extent or degree than is common."³ (EC § 451(e).) By simple definition the term "especially" as contained in section 2402(C)(1) cannot possibly apply in 100% of cases, yet that is precisely how it has been applied by the Board. As pointed out by the Second District Court of Appeal, not every murder can be found to be "atrocious, heinous, or callous" or the equivalent without "doing

² In a single case out of the 2690 that were examined Petitioner has conceded that the Board did not invoke §2402(c)(1). This Court finds that concession to be improvidently made and the result of over caution. When announcing the decision at the initial hearing of S. Fletcher (H-10330) on 4/6/06, the commissioner did begin by stating "I don't believe this offense is particularly aggravated..." However the commissioner proceeds to describe the crime as a drug deal to which Fletcher brought a gun so "we could say there was some measure of calculation in that." The commissioner continued by observing that the reason someone would bring a gun to a drug transaction was to make sure things went according to their plan "so I guess we can say that that represents calculation and perhaps it's aggravated to that extent." As is the Board's standard practice, by using the word 'calculated' from §2402(c)(1)(b) the Board was invoking that regulation. Certainly if Mr. Fletcher had brought a habeas petition Respondent's position would be that there is 'some evidence' supporting this. The ambiguity created by the commissioner's initial statement was cleared up several pages later when he announces that "based upon the crime coupled with ..." parole was denied for four years. (See *In re Burns* (2006) 136 Cal.App.4th 1318, 1326, holding §2402(c)(1) criteria are necessary for a multi-year denial.)

1 violence" to the requirements of due process. (*In re Lawrence* (2007)
2 150 Cal.App.4th 1511, 1557.) This is precisely what has occurred
3 here, where the evidence shows that the determinations of the Board
4 in this regard are made not on the basis of detailed guidelines and
5 individualized consideration, but rather through the use of all
6 encompassing catch phrases gleaned from the regulations.

7 8 THE BOARD'S METHODS

9 Because it makes no effort to distinguish the applicability of
10 the criteria between one case and another, the Board is able to force
11 every case of murder into one or more of the categories contained in
12 §2402(c).

13 For example, if the inmate's actions result in an instant death
14 the Board finds that it was done in a "dispassionate and calculated
15 manner, such as an execution-style murder." At the same time the
16 Board finds that a murder not resulting in near instant death shows a
17 "callous disregard for human suffering" without any further analysis
18 or articulation of facts which justify that conclusion. If a knife
19 or blunt object was used, the victim was "abused, defiled, or
20 mutilated." If a gun was used the murder was performed in a
21 "dispassionate and calculated manner, such as an execution-style
22 murder." If bare hands were used to extinguish another human life
23 then the crime is "particularly heinous and atrocious."

24 Similarly, if several acts, spanning some amount of time, were
25 necessary for the murder the Board may deny parole because the inmate
26 had "opportunities to stop" but did not. However if the murder was

27 ³ Princeton University World Net Dictionary (2006).
28

1 A "petitioner's young age at the time of the offense" must be
 2 considered. (*In re Elkins* (2006) 144 Cal.App.4th 475, 500, quoting
 3 *Rosenkrantz v. Marshall* (C.D.Cal. 2006) 444 F. Supp. 2d 1063, 1065,
 4 1085: "The reliability of the facts of the crime as a predictor for
 5 his dangerousness was diminished further by his young age of 18, just
 6 barely an adult. 'The susceptibility of juveniles to immature and
 7 irresponsible behavior means their irresponsible conduct is not as
 8 morally reprehensible as that of an adult.'")⁵

9 The Board's formulaic practice of stating §2402(c)(1) phrased in
 10 a conclusory fashion, and then stating "this is derived from the
 11 facts" without ever linking the two together, is insufficient. (*In*
 12 *re Roderick*, (2007) ____ Cal.App.4th ____ (A113370): "At minimum, the
 13 Board is responsible for articulating the grounds for its findings
 14 and for citing to evidence supporting those grounds." (See also *In*
 15 *re Barker* (2007) 151 Cal.App.4th 346, 371, disapproving
 16 "conclusorily" announced findings.)

17 After two decades, mundane "crimes have little, if any,
 18 predictive value for future criminality. Simply from the passing of
 19 time, [an inmate's] crimes almost 20 years ago have lost much of
 20 their usefulness in foreseeing the likelihood of future offenses than
 21 if he had committed them five or ten years ago." (*In re Lee* (2006)
 22 143 Cal.App.4th 1400, 1412.) It should be noted that this rule

23
 24 willfulness and bias. The jury had a reasonable doubt that Petitioner committed
 25 first degree murder but under the Board's 'reasoning' and 'analysis' this puts him
 26 in a worse position than if they had not. Had the jury convicted him of the
 27 greater offense Petitioner has served so much time that he would already be having
 28 subsequent parole hearings on a first and the Board would not have been able to use
 the 'some evidence' of first degree behavior against him. As observed previously,
 the Board's position in this regard is "so ridiculous that simply to state it is to
 refute it." (*Weider, supra*, 145 Cal.App.4th at p. 583.)

⁵ This point is particularly significant in the case of Mike Ngo. Mr. Ngo was only
 18 at the time of his crime. The impetus behind the shooting was youth group or

1 applies with even more force when the Board is relying on any
2 criminality that occurred before the crime. In that situation, just
3 as with the crime itself, the Board must explain why such old events
4 have any relevance and especially when the inmate has spent a decade
5 as a model prisoner.

6 Murders situationally related to intimate relationships are
7 unfortunately commonplace because emotions are strongest in such
8 domestic settings. When a murder occurs because of "stress unlikely
9 to be reproduced in the future" this is a factor that affirmatively
10 points towards suitability. (In re Lawrence (2007) 150 Cal.App.4th
11 1511 and cases cited therein.)

12 "The evidence must substantiate the ultimate conclusion that the
13 prisoner's release currently poses an unreasonable risk of danger to
14 the public. It violates a prisoner's right to due process when the
15 Board or Governor attaches significance to evidence that forewarns no
16 danger to the public." (In re Tripp (2007) 150 Cal.App.4th 306,
17 313.)

18 The Board "cannot rely on the fact that the killing could have
19 been avoided to show the killing was especially brutal." (In re
20 Cooper (2007) 153 Cal.App.4th 1043, 1064.)

21 The Board's focus must be upon how the inmate "actually
22 committed his crimes" not the "incorporeal realm of legal
23 constructs." (Lee, supra, 143 Cal.App.4th at p. 1413.) This is
24 especially significant when the murder conviction is based on the
25 felony murder rule, provocative act doctrine, or accomplice liability
26 such that the inmate did not intend to kill or may not have even been
27 gang rivalries, posturing, and threats which mature adults would not have been.
28

1 the actual killer.

2 The Board has ample guidance before it in the decisions of the
3 various reviewing courts to constrain its abuse, but has failed to
4 avail itself of the opportunity to do so.

5 6 SEPARATION OF POWERS DOCTRINE

7 The evidence presented, as discussed above, has established a
8 void for vagueness "as applied" due process violation. That same
9 evidence also proves a separate but related Constitutional violation
10 -- an as applied separation of powers violation.

11 The separation of powers doctrine provides "that the legislative
12 power is the power to enact statutes, the executive power is the
13 power to execute or enforce statutes, and the judicial power is the
14 power to interpret statutes and to determine their
15 constitutionality." (Lockyer v. City and County of San Francisco
16 (2004) 33 Cal.4th 1055, 1068.) Because the evidence has proven the
17 Board is not executing/enforcing the legislature's statutes as
18 intended it is this Court's duty to intervene. The question here is
19 whether the Board is violating the separation of powers doctrine by
20 appropriating to itself absolute power over parole matters and
21 disregarding the limits and guidelines placed by the statute.⁶
22 "Government Code section 11342.2 provides: 'Whenever by the
23

24 caught up in.

25 ⁶ "It is settled that Administrative regulations that violate acts of the
26 Legislature are void and no protestations that they are merely an exercise of
27 administrative discretion can sanctify them. They must conform to the legislative
28 will if we are to preserve an orderly system of government. Nor is the motivation
of the agency relevant: It is fundamental that an administrative agency may not
usurp the legislative function, no matter how altruistic its motives are."
(Agricultural Labor Relations Board v. Superior Court of Tulare County (1976) 16
Cal.3d 392, 419 quoting Morris v. Williams (1967) 67 Cal.2d 733, 737, and City of
San Joaquin v. State Bd. of Equalization (1970) 9 Cal.App.3d 365, 374.)

1 express or implied terms of any statute a state agency has authority
2 to adopt regulations to implement, interpret, make specific or
3 otherwise carry out the provisions of the statute, no regulation
4 adopted is valid or effective unless consistent and not in conflict
5 with the statute and reasonably necessary to effectuate the purpose
6 of the statute.' Administrative regulations that alter or amend the
7 statute or enlarge or impair its scope are void and courts not only
8 may, but it is their obligation to strike down such regulations."
9 (*Pulaski v. Occupational Safety & Health Stds. Bd.* (1999) 75
10 Cal.App.4th 1315, 1341, citations omitted.)

11 The vice of overbroad and vague regulations such as are at issue
12 here is that they can be manipulated, or 'interpreted,' by executive
13 agencies as a source of unfettered discretion to apply the law
14 without regard to the intent of the people as expressed by the
15 legislature's enabling statutes. In short, agencies usurp unlimited
16 authority from vague regulations and become super-legislatures that
17 are unaccountable to the people. As it has sometimes been framed and
18 addressed in the case law, a vague or all encompassing standard runs
19 the risk of "violat[ing] the separation of powers doctrine by
20 'transforming every [executive decisionmaker] into a "mini-
21 legislature" with the power to determine on an ad hoc basis what
22 types of behavior [satisfy their jurisdiction].'" (*People v. Ellison*
23 (1998) 68 Cal.App.4th 203, 211, quoting *People v. Superior Court*
24 (*Caswell*) (1988) 46 Cal.3d 381, 402.)

25 "It is concern about 'encroachment and aggrandizement,' the
26 [United States Supreme Court] reiterated, that has animated its
27 separation of powers jurisprudence. 'Accordingly, we have not
28

1 hesitated to strike down provisions of law that either accrete to a
2 single Branch powers more appropriately diffused among separate
3 Branches or that undermine the authority and independence of one or
4 another coordinate Branch.'" (Kasler v. Lockyer (2000) 23 Cal.4th
5 472, 493, quoting *Mistretta v. United States* (1989) 488 U.S. 361,
6 382.) This articulation of the principle speaks directly to the
7 situation at hand. The Board, by its enactment and interpretation of
8 Title 15, §2402, has appropriated to itself absolute power over
9 'lifer' matters. Overreaching beyond the letter and spirit of the
10 Penal Code provisions, Title 15, §2402(c)(1) has been interpreted by
11 the Board to supply the power to declare every crime enough to deny
12 parole forever. The fact that Title 15, §2402, has been invoked in
13 every case, but then sometime later not invoked, tends to show either
14 completely arbitrary and capricious behavior or that unwritten
15 standards are what really determine outcomes. In either event, all
16 pretenses of taking guidance from, or being limited by, the
17 legislature's statutes have been abandoned. "[I]t is an elementary,
18 proposition that statutes control administrative interpretations."
19 (*Ohio Casualty Ins. Co. v. Garamendi* (2006) 137 Cal.App.4th 64, 78.)
20 Title 15 §2402 as applied, however, has no controls or limitations.

21 The PC § 3041(b) exception to the rule can only be invoked when
22 the "gravity of the current convicted offense or offenses, or the
23 timing and gravity of current or past convicted offense or offenses,
24 is such that consideration of the public safety requires a more
25 lengthy period of incarceration for this individual." The word
26 "gravity" is a directive for comparison just as "more lengthy"
27 indicates a deviation from the norm. While *Dannenberg* held there
28

1 does not need to be intra case comparison for the purposes of term
2 uniformity or proportionality, there necessarily has to be some sort
3 of comparison for the purposes of adhering to the legislative mandate
4 that parole is available. The Board employs no meaningful yardstick
5 in measuring parole suitability. This is a violation of the
6 separation of powers doctrine. (*People v. Wright* (1982) 30 Cal.3d
7 705, 712-713. And see *Terhune v. Superior Court* (1998) 65
8 Cal.App.4th 864, 872-873. Compare *Whitman v. Am. Trucking Ass'ns*
9 (2001) 531 U.S. 457, 472, describing a delegation challenge as
10 existing when the legislature fails to lay down "an intelligible
11 principle to which the person or body authorized to act is directed
12 to conform.")

13 14 RESPONDENT'S POSITION

15 The Attorney General has suggested, without pointing to any
16 concrete examples, that it is possible that the Board, when invoking
17 the crime as a reason to deny parole, is not placing it within
18 §2402(c)(1) but instead using it as some sort of 'lesser factor'
19 which, only when combined with other unsuitability criteria, can
20 contribute to a valid parole denial. The two problems with this
21 position are, first, there is no evidentiary support for this
22 assertion, and second, it would have no impact on the constitutional
23 infirmities outlined and proven above.

24 Even if Respondent had produced evidence that the Board was
25 utilizing the crime as a 'lesser factor' which needs others to fully
26 support a parole denial, the Board would then be admitting it was
27 denying parole, in part, for the very reason that the person is
28

1 before the panel and eligible for parole in the first place - the
2 commitment offense. Respondent's argument suggests that a crime that
3 only qualified as the *Dannenberg* "minimum necessary" could still be
4 invoked as a reason for denying parole. Respondent argues that when
5 the crime is invoked 'not in the *Dannenberg* sense,' there must be
6 other reasons for the parole denial and the crime alone would not be
7 enough in this context. This position is inconsistent with the law
8 and fundamental logic.

9 A crime qualifies under *Dannenberg* when it is "particularly
10 egregious," or one where "no circumstances of the offense reasonably
11 could be considered more aggravated or violent than the minimum
12 necessary to sustain a conviction for that offense." (*Dannenberg*,
13 *supra*, 34 Cal.4th at pp. 1094-1095.) These are the only two choices.

14 If a crime consists of only the bare elements then it is not
15 aggravated and it cannot, in and of itself, serve as a basis for
16 parole denials once the inmate becomes eligible for parole. It is
17 the reason an inmate may be incarcerated initially for the equivalent
18 of 15 or 25 years, and then examined to determine rehabilitation
19 efforts when they come before the Board, but a crime that is no more
20 than the bare minimum cannot be factored into the equation pursuant
21 to PC § 3041(b) or any of the case law interpreting it.

22 In oral argument Respondent suggested a second way the
23 commitment offense can be used outside of §2402(c)(1). If for
24 example a crime had its roots in gang allegiances or rivalries and,
25 the inmate continued to associate with gangs while incarcerated, then
26 an aspect of the crime, even if the crime otherwise consisted of no
27 more than the minimum elements, could be combined with other behavior
28

1 to support a parole denial. Similarly, if a crime was rooted in an
2 inmate's then existing drug addiction, and the Board was to point to
3 a recent 115 involving drugs, the evidence that the inmate's drug
4 issues had not been resolved would justify a parole denial even if
5 the crime itself was not aggravated. A finding that the inmate is
6 not suitable for release under these circumstances, however, is not
7 based on the facts of the commitment offense as tending to show
8 unsuitability. It is based on the conclusion that can be drawn about
9 Petitioner's lack of rehabilitation or change since the offense, and
10 thus, his present dangerousness.

11 Respondent has not demonstrated any flaws in Petitioner's
12 methodology or analysis, nor provided any actual evidence of the
13 crime being invoked other than pursuant to §2402(c)(1). Drawing
14 conclusions from the Board's direct statements, or its precise
15 recitations of the §2402(c)(1) language, logically indicates an
16 invocation of §2402(c)(1), and Respondent's suggestion otherwise is
17 insupportable.

18 THE QUESTION OF BIAS

19
20 Because the issue has been squarely presented, and strenuously
21 argued by Petitioners, this Court is obligated to rule on the charge
22 that the Board's actions prove an overriding bias and deliberate
23 corruption of their lawful duties.

24 In the discrimination and bias case of *USPS Bd. of Governors v.*
25 *Aikens* (1983) 460 U.S. 711, the United States Supreme Court
26 acknowledged "there will seldom be 'eyewitness' testimony as to the
27 [] mental processes" of the allegedly biased decisionmaker. Instead,

1 an examination of other cases for trends or patterns can provide the
 2 necessary circumstantial evidence. (See *Aikens*, *supra*, at footnote
 3 2.) Reaffirming that such circumstantial evidence will be sufficient
 4 the Court stated: "The law often obliges finders of fact to inquire
 5 into a person's state of mind. As Lord Justice Bowen said in
 6 treating this problem in an action for misrepresentation nearly a
 7 century ago, 'The state of a man's mind is as much a fact as the
 8 state of his digestion. It is true that it is very difficult to
 9 prove what the state of a man's mind at a particular time is, but if
 10 it can be ascertained it is as much a fact as anything else.'"

11 (*Aikens*, at pp. 716-717, quoting *Edgington v. Fitzmaurice* (1885) 29
 12 Ch. Div. 459, 483.)⁷

13 The discovery in these cases was granted in part due to the
 14 Petitioners' prima facie showing of bias and the necessity that it be
 15 "adequately supported with evidence" if such evidence is available.
 16 (*Ramirez*, *supra*, 94 Cal.App.4th at p. 564, fn. 5. See also *Nasha v.*
 17 *City of Los Angeles* (2004) 125 Cal.App.4th 470, 483: "A party seeking
 18 to show bias or prejudice on the part of an administrative decision
 19 maker is required to prove the same 'with concrete facts.'" And see
 20 *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674,
 21 841: "The challenge to the fairness of the adjudicator must set forth
 22 concrete facts demonstrating bias or prejudice." See also *Hobson v.*

23
 24 ⁷ As occurred in *Aikens*, *supra*, and as suggested in prior orders of this Court,
 25 Respondent should have provided direct evidence from the decisionmakers. While the
 26 fact that a Defendant does not explain his or her actions cannot be held against
 27 him, (*Griffin v. California* (1965) 380 U.S. 609, *Doyle v. Ohio* (1976) 426 U.S.
 28 610,) it is appropriate to give some weight to the consideration that the Board has
 failed to offer any direct evidence or explanation on its own behalf. While the
 case of *Hornung v. Superior Court* (2000) 81 Cal.App.4th 1095 stands for the
 proposition that Petitioner may not inquire into the Board members mental
 processes, Respondent is not precluded from offering such direct evidence if they
 were able to testify as to their good faith and conscientious efforts.

1 Hansen (1967) 269 F.Supp. 401, 502, the watershed Washington D.C.
2 school desegregation case in which the court determined from a
3 statistical and factual analysis that racial bias was influencing
4 policy.)

5 In the case of *People v. Adams* (2004) 115 Cal.App.4th 243, 255,
6 a similar claim of biased decision making was asserted and it was
7 rejected because, although the defendant clearly articulated it, "he
8 has not demonstrated it. Therefore, he has failed to bear his burden
9 of showing a constitutional violation as a demonstrable reality, not
10 mere speculation." In the present cases Petitioners have provided
11 overwhelming concrete evidence. It is difficult to believe that the
12 Board's universal application of §2402(c)(1) has been an inadvertent
13 mistake or oversight on their part. It is hard to credit the Board's
14 position that it does not know its own patterns and practices reveal
15 a complete lack of standards or constraints on their power.
16 Respondent's protestations ring hollow, and it seems a statistical
17 impossibility, that the Board's use of "detailed" criteria in such a
18 fashion that they are rendered meaningless is a result of good faith
19 efforts on their part. That every murder is "especially heinous,
20 atrocious or cruel," and can therefore be an exception to the rule
21 that a parole date should be set, does not seem to be an accident on
22 their part.

23 Although no court has thus far agreed with the accusation that
24 the Board approaches its duties with a predetermination and a bias,
25 no court has previously been presented the comprehensive evidence
26 outlined herein. While this Court does not turn a blind eye to the
27 reasonable conclusion that the Board's unconstitutional practices are
28

1 willful, there is another possibility. The pattern of errors
2 demonstrated by the discovery in this case, and the continuously
3 growing body of Court of Appeal opinions finding consistent and
4 persistent abuse of discretion, may instead be caused by the fact
5 that the Board is simply overworked and substantively untrained. The
6 impossibility of the blanket applicability of §2402(c)(1) may be only
7 the result of sloppy preparation and inadvertent carelessness.

8 The Board must first be given an opportunity to comply with the
9 necessary remedy provided by this court before it is possible to
10 enter a finding of conscious bias and illegal sub rosa policy. To do
11 otherwise would ignore the complexities and magnitude of the largely
12 discretionary duties with which that Board is vested.

13 14 CONCLUSION

15 The conclusive nature of the proof in this case, and the
16 suggestion of institutional bias do not preclude formulation of an
17 remedy which will guarantee adequate restrictions on, and guidance
18 for, the Board's exercise of discretion in making parole suitability
19 determinations. The Board can be made to lawfully perform its duties
20 if given explicit instructions.

21 As noted supra, a reason the proof in this case irrefutably
22 establishes constitutional violations is because the Board does not,
23 in actual fact, operate within the limiting construction of the
24 regulations. The Board's expansive interpretation allows it to
25 operate without any true standards. Although numerous rulings of
26 both state and federal courts of appeal have invalidated the Board's
27 application of the §2402(c) criteria to particular facts, the Board
28

1 does not take guidance from these binding precedents and ignores them
2 for all other purposes. In the most recent of these cases, *In re*
3 *Roderick*, (2007) ____ Cal.App.4th ____ (A113370) the First District
4 held four of five §2402 factors "found" by the Board to be
5 unsupported by any evidence. At footnote 14 the court took the time
6 to criticize the Board for its repeated use of a "stock phrase"
7 "generically across the state." The court also clarified that "at
8 minimum, the Board is responsible for articulating the grounds for
9 its findings and for citing to evidence supporting those grounds."

10 There is nothing in the evidence presented that would allow any
11 conclusion but that, without intervention of the Courts, the Board
12 will ignore the lessons of these rulings in the future and continue
13 to employ its formulaic approach of citing a criteria from
14 §2402(c)(1), repeating the facts of the crime, but never
15 demonstrating a logical connection between the two. This is the
16 core problem with the Board's methodology -- they provide no
17 explanation or rationale for the findings regarding the crime itself.

18 This practice results in violence to the requirements of due
19 process and individualized consideration which are paramount to the
20 appropriate exercise of its broad discretion.

21 The only solution is one that compels the Board to identify the
22 logical connection between the facts upon which it relies and the
23 specific criteria found to apply in the individual case. For
24 example, the Board often finds that an inmate's motive is "trivial"
25 without ever suggesting why, on these facts, that motive is not just
26 as trivial as the motive behind any other murder. What motive is not
27 trivial? By any definition "trivial" is a word of comparison and
28

1 only has meaning when there can be examples that are not "trivial."

2 Similarly, although the Sixth District made it plain four years
3 ago that "all [] murders by definition involve some callousness," (In
4 re Smith (2003) 114 Cal.App.4th 343, 345,) the Board has continued to
5 deny countless paroles labeling the crime "callous" without ever
6 suggesting what crime would not qualify as "callous" and without
7 consistently explaining why the individual case before it
8 demonstrates "exceptional" callousness.

9 Respondent has consistently refused to suggest what possible
10 instances of murder would not fit the Board's amorphous application
11 of the §2402 criteria. Citing *Dannenberg*, Respondent insists such
12 comparative analysis is unnecessary. Respondent fundamentally
13 misunderstands the *Dannenberg* holding.

14 The PC § 3041(b) exception to the rule can only be invoked when
15 the "gravity of the current convicted offense or offenses, or the
16 timing and gravity of current or past convicted offense or offenses,
17 is such that consideration of the public safety requires a more
18 lengthy period of incarceration for this individual." The word
19 "gravity" is a directive for comparison just as "more lengthy"
20 indicates a deviation from the norm. While *Dannenberg* held there
21 does not need to be intra case comparison for the purposes of term
22 uniformity or proportionality, there necessarily has to be some sort
23 of comparison for the purposes of adhering to the legislative mandate
24 that parole is available. This is implicit in §2402 because the
25 qualifier "especially," in "especially heinous atrocious or cruel,"
26 requires that some form of comparison be made. While the original
27 drafters of §2402 seemed to have recognized this fact, the ongoing
28

1 conduct of the Board has completely ignored it, and this is the
2 essence of the due process violation Petitioners have asserted.

3 As noted in his dissent in the recent case of *In re Roderick*,
4 *supra*, Justice Sepulveda would have deferred to the Board's
5 'exercise' of discretion because "Board members have both training
6 and vast experience in this field. They conduct literally thousands
7 of parole suitability hearings each year. The Board therefore has
8 the opportunity to evaluate the egregiousness of the facts of a great
9 number of commitment offenses. The Board's training and
10 experience in evaluating these circumstances far exceeds that of
11 most, if not all, judges." The evidence in this case, however,
12 suggests a flaw in granting such deference. Since the Board
13 continues to place every murder in the category of offenses "tending
14 to show unsuitability," something is certainly wrong. Since the
15 Board's vast experience is undeniable, the problem must be in the
16 Board's training and understanding of the distinguishing features of
17 the guidelines and criteria. Although Justice Sepulveda presumes
18 that Board members receive substantive training, there is no evidence
19 before this court to suggest that it does, and substantial
20 circumstantial evidence to suggest that it does not.

21 In the vast numbers of Santa Clara County cases reviewed by this
22 Court, the Board's formulaic decisions regarding the commitment
23 offense do not contain any explanation or thoughtful reasoning.
24 Instead, the Board's conclusionary invocation of words from
25 §2402(c)(1) is linked to a repetition of the facts from the Board
26 report by the stock phrase: "These conclusions are drawn from the
27 statement of facts wherein" Thereafter the inmate files a habeas
28

1 corpus petition and Respondent, after requesting an extension of
2 time, files a boilerplate reply asserting the Board's power is
3 "great" and "almost unlimited" and thus any "modicum" of evidence
4 suffices. Respondent does not cite or distinguish the expanding body
5 of case law that is often directly on point as to specific findings
6 made. Thereafter, if the writ is granted, the Board is directed to
7 conduct a new hearing "in compliance with due process" and that order
8 is appealed by Respondent. On appeal the order is usually upheld
9 with modifications and in the end, after countless hours of attorney
10 and judicial time, the Board conducts a new two hour hearing at which
11 they abuse their discretion and violate due process in some different
12 way.

13 This system is malfunctioning and must be repaired. The
14 solution must begin with the source of the problem. The Board must
15 make efforts to comply with due process in the first instance. The
16 case law published over the last five years provides ample and
17 sufficient guidelines and must be followed. Although the Board
18 methods suggest it believes this to be optional, it is not.

20 THE REMEDY

21 Thus, it is the order of this Court that the Board develop,
22 submit for approval, and then institute a training policy for its
23 members based on the current and expanding body of published state,
24 and federal, case law reviewing parole suitability decisions, and
25 specifically the application of §2402 criteria. In addition to
26 developing guidelines and further criteria for the substantive
27 application of §2402 the Board must develop rules, policies and
28

1 procedures to ensure that the substantive guidelines are followed.

2 This Court finds its authority to impose this remedy to flow
3 from the fundamental principles of judicial review announced over two
4 centuries ago in *Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137.
5 Citing that landmark case, the California Supreme Court has
6 recognized "Under time-honored principles of the common law, these
7 incidents of the parole applicant's right to 'due consideration'
8 cannot exist in any practical sense unless there also exists a remedy
9 against their abrogation." (*In re Sturm* (1974) 11 Cal.3d 258, 268.)

10 In *Sturm* the court directed that the Board modify its rules and
11 procedures so that thereafter "The Authority will be required [,]
12 commencing with the finality of this opinion, to support all its
13 denials of parole with a written, definitive statement of its reasons
14 therefor and to communicate such statement to the inmate concerned."
15 (*Sturm* at p. 273.)

16 Similarly, in the case of *Minnis, supra*, the California Supreme
17 Court held the Board's policy of categorically denying parole to drug
18 dealers was illegal. Based on its analysis the court there was
19 clearly prepared to order that Board to modify its rules and
20 procedures however such was unnecessary because the Board
21 "voluntarily rescinded" the illegal policy. While the remedy in this
22 case is of greater scope than that necessary in either *Sturm* or
23 *Minnis, supra*, so too has been the showing of a systematic abuse of
24 discretion and distortion of process.

25 The most recent case to address the court's roles and duties in
26 overseeing the parole suitability process has been *In re Rosenkrantz,*
27 *supra*, 29 Cal.4th 616. In that case the court explained that
28

1 judicial review of a Governor's parole determination comports with,
2 and indeed furthers, separation of powers principles because the
3 courts are not exercising "complete power" over the executive branch
4 and do not "defeat or materially impair" the appropriate exercise or
5 scope of executive duties. (Rosenkrantz at p. 662.) Citing Strum,
6 supra, the court reaffirmed that a life term inmate's "due process
7 rights cannot exist in any practical sense without a remedy against
8 its abrogation." (Rosenkrantz at p. 664.)

9 The Rosenkrantz court also put forth what it believed was an
10 extreme example but which, unfortunately, has been shown to exist in
11 this case. The court stated: "In the present context, for example,
12 judicial review could prevent a Governor from usurping the
13 legislative power, in the event a Governor failed to observe the
14 constitutionally specified limitations upon the parole review
15 authority imposed by the voters and the Legislature." This is
16 exactly what the evidence in this case has proven. As noted above
17 the Board has arrogated to itself absolute authority, despite
18 legislative limitations and presumptions, through the mechanism of a
19 vague and all inclusive, and thus truly meaningless, application of
20 standards. The remedy this Court is imposing is narrowly tailored to
21 redress this constitutional violation.

22 The consequence of the Board's actions (of giving § 2402(c)(1)
23 such a broadly all encompassing and universal application) is that
24 they have unwittingly invalidated the basis of the California Supreme
25 Court's holding in *Dannenberg*. The reason the four justice majority
26 in *Dannenberg* upheld the Board's standard operating procedures in the
27 face of the Court of Appeal and dissent position is because "the
28

1 Board must apply detailed standards when evaluating whether an
2 individual inmate is unsuitable for parole on public safety grounds."
3 (Dannenberg at p. 1096, footnote 16. See also page 1080: "the
4 regulations do set detailed standards and criteria for determining
5 whether a murderer with an indeterminate life sentence is suitable
6 for parole.") However, Petitioners in these cases have proven that
7 there are no "detailed standards" at all. Instead the Board has
8 systematically reduced the "detailed standards" to empty words. The
9 remedy this Court orders, that there truly be "detailed standards,"
10 requires the promulgation of further rules and procedures to
11 constrain and guide the Board's powers. This remedy differs in
12 specifics, but not in kind, from what courts have previously imposed
13 and have always had the power to impose.

14 The Board must fashion a training program and further rules,
15 standards and regulations based on the opinions and decisions of the
16 state and federal court cases which provide a limiting construction
17 to the criteria which are applied.⁸ The Board must also make
18 provisions for the continuing education of its commissioners as new
19 case law is published and becomes binding authority. This Court will
20 not, at this point, outline the requirements and lessons to be taken
21 from the above cases. It is the Board's duty, in the first instance
22 to undertake this task. The training program, and associated rules
23 and regulations, shall be served and submitted to this Court, in

24 ⁸While the showing and analysis in this case was limited to § 2402(c)(1), the
25 conclusions that the evidence compelled, that the Board has been carelessly
26 distorting and misapplying the regulations, is not so limited. Accordingly, the
27 training program that is necessary for the Board can not reasonably be limited to
28 just § 2402(c)(1). Thus, to the extent case law recognizes, clarifies and
establishes remedies for other due process violations they must also be
incorporated into the necessary rules and training the Board is required to abide
by.

1 writing, within 90 days. Counsel for Petitioners, and any other
2 interested parties, may submit briefs or comments within 30 days
3 thereafter. After receipt and review of the materials this Court
4 will finalize the training program, and associated rules, and the
5 Petitioners in these cases shall receive a new hearing before a Board
6 that does not operate with the unfettered discretion and caprice
7 demonstrated by the evidence here presented.

8 ORDER

9 For the above reasons the habeas corpus petition is granted and
10 it is hereby ordered that Petitioner be provide a new hearing which
11 shall comply with due process as outlined above. Respondent shall
12 provide weekly updates to this Court on the progress of its
13 development of the new rules and regulations outlined above.

14
15
16
17 DATED: Aug 30, 2007

Linda R. Condrón
LINDA R. CONDRON
JUDGE OF THE SUPERIOR COURT

18
19
20 cc: Petitioner's Attorney (Jacob Burland)
21 Attorney General (Denise Yates, Scott Mather)
22
23
24
25
26
27
28



EXHIBIT "G"

bd

United States District Court
for the
Eastern District of California
December 22, 2004

* * CERTIFICATE OF SERVICE * *

2:96-cv-00783

Coleman

v.

Board of Prison Term

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on December 22, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.


Tami M Warwick
Attorney General's Office for the State of California
PO Box 944255
1300 I Street
Suite 125
Sacramento, CA 94244-2550

TM/PAN
AR/LKK

Ann Catherine McClintock
Federal Defender
801 I Street
Third Floor
Sacramento, CA 95814

Jack L. Wagner, Clerk

BY:


Deputy Clerk

The Judge Division
①

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVYN COLEMAN,

Petitioner,

No. CIV S-96-0783 LKK PAN P

vs.

BOARD OF PRISON TERMS, et al.,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On December 22, 2004, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Respondent has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

(2)

Judges decision

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed December 22, 2004, are adopted in full; and

2. The petition for habeas corpus will be granted unless, within 60 days, respondent provides a fair parole suitability hearing, conducted by a board free of any prejudice stemming from a gubernatorial policy against parole for murderers.

DATED: May 19, 2005.

/s/Lawrence K. Karlton
LAWRENCE K. KARLTON
SENIOR JUDGE -
UNITED STATES DISTRICT COURT

The case pages (1-11)

FILED

DEC 22 2004

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

United States District Court
Eastern District of California

Melvyn H. Coleman,

Petitioner,

vs.

Board of Prison Terms, et al.,

Respondents.

No. Civ. S-96-0783 LKK PAN P

Findings and Recommendations

-oOo-

Petitioner seeks a writ of habeas corpus.

In his November 14, 1997, second amended petition petitioner claims his federal due process guarantee was violated because the California Board of Prison Terms (Board) has failed to conduct a fair parole suitability hearing.

In 1974 petitioner was convicted of first degree murder, attempted murder, first degree robbery, first degree burglary and other charges. The victims, Mr. And Mrs. Stewart, returned to their home while petitioner was burglarizing it; he then

the case

1 approached before they got out of their car and robbed and shot
2 them, killing Mr. Stewart and seriously wounding Mrs. Stewart.
3 Petitioner had a prior juvenile record.

4 Under California law, a prisoner including a convicted
5 murderer serving an indeterminate term (i.e., seven years to
6 life) is entitled to a hearing before a panel composed of members
7 of the Board to determine his suitability for parole. By
8 statute, parole at some point normally is appropriate and the
9 Board "shall set a release date unless it determines that the
10 gravity of the current convicted offense or offenses, or the
11 timing and gravity of current or past convicted offense or
12 offenses, is such that consideration of the public safety
13 requires a more lengthy period of incarceration. . . ." Cal.
14 Penal Code § 3041(b). Procedures governing suitability hearings
15 are set forth in Penal Code § 3041.5 (providing prisoners with
16 notice and an opportunity to be heard and requiring a written
17 statement of reasons if the panel refuses to set a parole date).
18 Regulations prescribe factors for the panel to consider in
19 determining whether each prisoner is suitable or unsuitable for
20 parole. 15 CAC § 2281.¹

21
22 ¹ Factors supporting a finding of unsuitability include: (1) whether the
23 prisoner's offense for which he is confined was committed in an "especially
24 heinous, atrocious or cruel manner"; (2) the prisoner's record of violence prior
25 to the offense; (3) whether the prisoner has an unstable social history; (4)
26 whether the prisoner has committed sadistic sexual offenses; (5) whether the
prisoner has a lengthy history of severe mental problems related to the offense;
and (6) whether the prisoner has engaged in serious misconduct in prison or jail.
Factors supporting a finding of suitability include: (1) whether the prisoner has
a juvenile record; (2) whether the prisoner has experienced reasonably stable
relationships with others; (3) whether the prisoner shows signs of remorse; (4)

the case

1 Petitioner presents evidence that under Governors Wilson and
 2 Davis the Board disregarded regulations ensuring fair suitability
 3 hearings and instead operated under a sub rosa policy that all
 4 murderers be found unsuitable for parole. The record shows that
 5 between 1992 and 1998 less than one percent of the prisoners in
 6 this group were released on parole. During the previous period
 7 the parole rate had been about four percent. Petitioner presents
 8 sworn testimony that the policy was enforced by (1) appointing
 9 Board members less likely to grant parole and more willing to
 10 disregard their statutory duty; (2) removing Board members more
 11 likely to grant parole; (3) reviewing decisions finding a
 12 prisoner suitable and setting a new hearing before a different
 13 panel; (4) scheduling rescission hearings for prisoners who had
 14 been granted a parole date; (5) re-hearing favorable rescission
 15 proceedings and hand-picking panels to ensure the desired
 16 outcome; (6) panel members agreeing upon an outcome in advance of
 17 the hearing; and (7) gubernatorial reversal of favorable parole
 18 decisions. See e.g., declaration of former BPT Commissioner
 19 Albert Leddy (Leddy) paras. 5, 6, 8-17, 20 (attached as Ex. 17 to
 20 petitioner's March 27, 2003, motion for discovery); deposition of
 21 Leddy taken in In re Fortin, et al., San Diego Superior Court

22
 23 whether the prisoner committed his crime as the result of significant stress in
 24 his life; (5) whether the prisoner suffered from Battered Woman Syndrome when she
 25 committed the crime; (6) whether the prisoner lacks any significant history of
 26 violent crime; (7) whether the prisoner's present age reduces the probability of
 recidivism; (8) whether the prisoner has made realistic plans for release or has
 developed marketable skills that can be put to use on release; and (9) whether
 the prisoner's institutional activities indicate an enhanced ability to function
 within the law upon release. 15 CAC § 2281.

the case

1 case number HSC10279 at 18-19, 47-50, 56-59, 61-63, 65-66, 88-89,
2 95, 97-99, 102, 106, 110, 118 & 126 (attached as Ex. 10 to
3 petitioner's March 27, 2003, motion for discovery); deposition of
4 former BPT Commissioner Edmund Tong taken in Kimble v. Cal. BPT,
5 C.D. Cal. case number CV 97-2752 at 42-43, 45-47, 71, 73, 80-82,
6 85-86, 96, 103, 105, 107 & 109 (lodged December 30, 2003).²

7 The unrefuted record shows the no-parole-for-murderers
8 policy existed and continued under Governor Davis. In In re
9 Rosencrantz, the California Supreme Court took note of evidence
10 presented in the state trial court establishing that the Board
11 held 4800 parole suitability hearings between January 1999
12 through April 2001, granting parole to 48 murderers (one
13 percent). 29 Cal. 4th 616, 685 (2003). Of those 48, the
14 governor reversed 47 of the Board's decisions and only one
15 murderer out of 4800 actually was released on parole. Id.
16 Petitioner in Rosenkrantz also submitted evidence of the
17 following interview of Governor Davis reflected in the April 9,
18 1999, edition of the Los Angeles Times: " . . . [T]he governor
19 was adamant that he believes murderers - even those with second-
20 degree convictions - should serve at least a life sentence in
21 prison. [Para.] Asked whether extenuating circumstances should

22
23 ² Meanwhile, the annual cost to taxpayers of conducting these "pro forma"
24 hearings is enormous, amounting to millions of dollars per year. See Exhibit 7
25 to petitioner's March 27, 2003, motion for discovery (California Legislative
26 Analyst's Office - Analysis of the 2000-01 Budget Bill for the Board of Prison
Terms criticizing proposed \$19 million annual budget and noting huge cost of
additional incarceration resulting from no-parole policy).

The Case

1 be a factor in murder sentences, the governor was blunt: "No.
 2 Zero . . . They must not have been listening when I was
 3 campaigning. . . . If you take someone else's life, forget it.
 4 I just think people dismiss what I said in the campaign as either
 5 political hyperbole or something that I would back away from . .
 6 . . We are doing exactly what we said we were going to do.""
 7 29 Cal. 4th at 684.

8 Respondent does not refute the alleged facts. Instead,
 9 respondent argues that, assuming ^{some}arguendo prisoners in California
 10 have an interest in a parole date protected by the due process
 11 clause, constitutional requirements are met so long as there is
 12 "some evidence" supporting the findings petitioner is unsuitable.
 13 See Oppo. at 7:20 (so long as "some evidence" standard is met,
 14 "the Board decisions could not have been arbitrary.") For the
 15 reasons explained, this court rejects that claim. As this court
 16 previously has found, there always will be "some evidence" that
 17 can be used to explain a denial or rescission under the
 18 circumstances. Federal due process requires more.

19 California's parole scheme gives rise to a protected liberty
 20 interest in release on parole. McQuillion v. Duncan, 306 F.3d
 21 895, 902 (2002); Jancsek v. Oregon Bd. of Parole, 833 F.2d 1389,
 22 1390 (9th Cir. 1987); Greenholtz v. Inmates of Nebraska Penal &
 23 Correctional Complex, 442 U.S. 1 (1979); Biggs v. Terhune, 334
 24
 25
 26

the case

1 F.3d 910, 915 (9th Cir. 2003); In re Rosenkrantz, 29 Cal. 4th 616
2 (2003).³

3 Therefore, petitioner is entitled to the process outlined in
4 Greenholtz, viz., notice, opportunity to be heard, a statement of
5 reasons for decision, and limited right to call and cross-examine
6 witnesses. The determination that petitioner is unsuitable for
7 parole must be supported by some evidence bearing some indicia of
8 reliability.

9 These guarantees do not exhaust petitioner's right to due
10 process. The fundamental core of due process is protection
11 against arbitrary action:

12 The principal and true meaning of the phrase has never
13 been more tersely or accurately stated than by Mr.
14 Justice Johnson, in Bank of Columbia v. Okely, 17 U.S.
15 235, 4 Wheat. 235-244, 4 L.Ed. 449 [(1819)]: "As to the
16 words from Magna Charta, incorporated into the
17 Constitution of Maryland, after volumes spoken and
18 written with a view to their exposition, the good sense
19 of mankind has at last settled down to this: that they
20 were intended to secure the individual from the
21 arbitrary exercise of the powers of government,
22 unrestrained by the established principles of private
23 right and distributive justice."

19 Hurtado v. California, 110 U.S. 516, 527, (1884). "The
20 concessions of Magna Charta were wrung from the king as
21 guaranties against the oppressions and usurpations of his

22
23 ³ That is so because the parole statute, Penal Code § 3041, uses mandatory
24 language ("The panel or board shall set a release date unless it determines"
25 further incarceration is necessary in the interest of public safety) which
26 "creates a presumption that parole release will be granted," unless the
statutorily defined determinations are made. Board of Pardons v. Allen, 482 U.S.
369, 378 (1987) (quoting Greenholtz, 442 U.S. at 12). As of 1988, by amendment
of the state constitution, a parole date given can be withdrawn by the Governor

the case

1 prerogative." Id. at 531. "The touchstone of due process is
2 protection of the individual against arbitrary action of
3 government." Wolff v. McDonnell, 418 U.S. 539, 558 (1974),
4 citing Dent v. West Virginia, 129 U.S. 114 (1889).

5 A government official's arbitrary and capricious exercise of
6 his authority violates the essence of due process, contrary to
7 centuries of Anglo-American jurisprudence. See Yick Wo v.
8 Hopkins, 118 U.S. 356, 369 (1886) ("When we consider the nature
9 and the theory of our institutions of government, the principles
10 upon which they are supposed to rest, and review the history of
11 their development, we are constrained to conclude that they do
12 not mean to leave room for the play and action of purely personal
13 and arbitrary power."); United States v. Lee, 106 U.S. 196, 220
14 (1882) ("No man in this country is so high that he is above the
15 law. No officer of the law may set that law at defiance with
16 impunity. All the officers of the government from the highest to
17 the lowest, are creatures of the law and are bound to obey it.
18 It is the only supreme power in our system of government, and
19 every man who by accepting office participates in its functions
20 is only the more strongly bound to submit to that supremacy, and
21 to observe the limitations which it imposes upon the exercise of
22 the authority which it gives."); U.S. v. Nixon, 418 U.S. 683,
23 695-96 (1974) (rule of law is "historic commitment"); Accardi v.
24 O'Shaughnessy, 347 U.S. 260, 267-68 (1954) (Attorney General must
25 abide by regulations and cannot dictate immigration board's
26 exercise of discretion in decision on application to suspend

the case

1 deportation; remedy is new hearing where board will exercise it's
2 discretion free from bias).

3 Concomitant to the guarantee against arbitrary and
4 capricious state action is the right to a fact-finder who has not
5 predetermined the outcome of a hearing. See Withrow v. Larkin,
6 421 U.S. 35 (1975) (a fair trial in a fair tribunal is a basic
7 requirement of due process, and this rule applies to
8 administrative agencies which adjudicate as well as to courts);
9 Edwards v. Balisok, 520 U.S. 641 (1997) (recognizing due process
10 claim based on allegations that prison disciplinary hearing
11 officer was biased and would suppress evidence of innocence);
12 Bakalis v. Golembeski, 35 F.3d 318, 326 (7th Cir. 1994) (a
13 decision-making body "that has prejudged the outcome cannot
14 render a decision that comports with due process").

15 Courts too numerous to list have recognized that the right
16 to a disinterested decision-maker, who has not prejudged the
17 case, is part of the fundamental guarantee against arbitrary and
18 capricious government conduct in the California parole context.
19 See, e.g., Rosenkrantz, 29 Cal. 4th at 677 (parole decision "must
20 reflect an individualized consideration of the specified criteria
21 and cannot be arbitrary and capricious"); In re Ramirez, 94 Cal.
22 App. 4th 549, 563 (2001) ("some evidence" standard is "only one
23 aspect of judicial review for compliance with minimum standards
24 of due process" (citing Balisok) and Board violates due process
25 if its decision is "arbitrary and capricious"); In re Minnis, 7
26 Cal. 3d 639 (1972) (blanket no-parole policy as to certain

the case

1 category of prisoners is illegal); In re Morrall, 102 Cal. App.
2 4th 280 (2003) (same). The guarantee of neutral parole officials
3 in a suitability hearing is just as fundamental as the right to a
4 neutral judge in a court proceeding. Compare Sellars v.
5 Procunier, 641 F.2d 1295 (9th Cir. 1981) (holding that California
6 parole officials, analogous to judges, are entitled to absolute
7 immunity).

8 The Ninth Circuit previously has acknowledged California
9 inmates' due process right to parole consideration by neutral
10 decision-makers. See O'Brenski v. Maas, 915 F.2d 418, 422 (9th
11 Cir. 1990). In that case the appellate court found that a
12 neutral parole panel at a new hearing would reach the same
13 outcome and so denied relief. The record in this case simply
14 will not permit the same conclusion. The requirement of an
15 impartial decision-maker transcends concern for diminishing the
16 likelihood of error. As the Supreme Court clearly held in
17 Balisok a decision made by a fact-finder who has predetermined
18 the outcome is per se invalid -- even where there is ample
19 evidence to support it. 520 U.S. at 648.

20 Petitioner presents a convincing case that a blanket policy
21 against parole for murderers prevented him from obtaining a
22 parole suitability determination made after a fair hearing.
23 Respondent offers nothing to counter petitioner's showing.

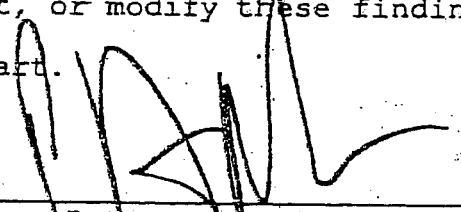
24 Accordingly, the court hereby recommends that the petition
25 for habeas corpus be granted unless, within 60 days of the
26 district court's adoption of these recommendations, respondent

the case

1 provides a fair parole suitability hearing, conducted by a board
2 free of any prejudice stemming from a gubernatorial policy
3 against parole for murderers.

4 Pursuant to the provisions of 28 U.S.C. § 636(b)(1), these
5 findings and recommendations are submitted to the United States
6 District Judge assigned to this case. Within 20 days after being
7 served with these findings and recommendations, respondent may
8 file written objections. The document should be captioned
9 "Objections to Magistrate Judge's Findings and Recommendations."
10 The district judge may accept, reject, or modify these findings
11 and recommendations in whole or in part.

12 Dated: DEC 21 2004



Peter A. Nowinski
Magistrate Judge